

Electronic billing for law firms

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At the beginning of 2004, we reviewed our billing practices at Kaltons. We had been scanning documents and forwarding them by e-mail to clients for some time, taking advantage of the ubiquitous Adobe Acrobat pdf document format over and above the tiff document format. The tiff document format presented difficulties displaying documents of more than one page on operating systems that are not current releases.

Adobe Reader has been a popular document delivery vehicle for some years now. As self-respecting technology solicitors, we thought that if our clients were happy receiving their bills by e-mail, that would streamline our practice to enable us to generate bills from our time recording database, rather than send them to the printer and send them on by post. When published in Adobe Acrobat pdf format, invoices can be displayed on any Macintosh or personal computer. It can also be sent to the client's e-mail address, rather than passing under the ever watchful eyes of office staff. In our experience, some clients are particularly sensitive to the circulation of the bills they receive for legal services.

Once we produced the invoice in pdf format, we were presented with a number of difficulties. First, as a matter of firm practice, we prefer to sign the documents personally. This required printing the pdf (defeating the purpose of electronic billing), signing it, and scanning the document so that the scanned version of the manuscript signature appeared on the bill itself. The scanned version of the manuscript signature is a form of electronic signature.

Signing a Bill

At Kaltons, we export our bills from our time recording database into Adobe Acrobat pdf format. Once we have produced the bill in this form, a partner signs the document with the Adobe Acrobat digital signature facility as follows: The document is opened, and then the digital signature tool is selected from the available tools in Acrobat. A blank area is selected in the document by the partner, and the signature is applied. It is important to note that before the signature can be applied, a password must be entered. Once the password is entered, the digital signature is applied and the document is automatically saved, ready for dispatch to the client – by e-mail to their inbox.

The Law

In *Goodman v J Eban Ltd*,¹ the defendant company refused to pay a solicitor, because the letter accompanying the bill of costs did not meet the requirements of s 65(2)(i) of the Solicitors Act 1932, in that a solicitor's bill should be signed by a solicitor. The bill was signed with a rubber stamp engraved in the form of a facsimile signature of the firm's name. The Court of Appeal held that the letter had been signed for the purposes of s 65. However, Evershed MR commented that it was desirable that '... as a matter of good practice, the "signature" of a bill of costs, or of a letter enclosing such a bill, by means of a rubber stamp seems to me in general undesirable'.² The purpose of the Act was to ensure that the partner signing the bill or letter assumed personal responsibility for any bill of costs delivered. It was argued and accepted that Mr Goodman intended the rubber stamp to authenticate the letter. Romer LJ pointed out, at 564, that should doubt rest in the client's mind as to the authenticity of the signature, the client could easily contact the solicitor by telephone or letter to confirm the signature that was affixed to the letter was done so by the solicitor. Denning LJ dissented on the basis that the solicitor should give his personal attention to the document, rather than 'denote the thoughtless impress of an automation...'³

Similarly in *British Estate Investment Society Ltd v Jackson (H M Inspector of Taxes)*,⁴ Danckwerts J said, "one would presume that when a document appears to be signed it has been duly signed by the officer

¹ [1954] 1 QB 550, [1954] 1 All ER 763, [1954] 2 WLR 581, 98 Sol Jo 214, CA.

² [1954] 1 QB 550 at 554.

³ [1954] 1 QB 550 at 561.

⁴ (1956) 37 TC 79, 35 ATC 413, 50 R & IT 33, [1956] TR 397, L(TC) 1811.

who purports to sign it, is a perfectly good one. It seems to me that the presumption in law is that the document has been properly signed until the contrary has been shown by a person who desires to upset that conclusion.”⁵ The decision in this case reinforced the point that it is the function the signature performs, and not the form the signature takes, that is important.

A similar point was made in *Jenkins v Gainsford and Thring, Re Jenkins's Goods*.⁶ In that case, the court considered the circumstance where a gentleman, who for some years experienced difficulty writing and signing his name, arranged for an engraving to be made of his signature and affixed this stamp to his will and two codicils. A witness to the will informed the court that after the engraving had been applied to the page, the testator acknowledged the signature as his own. The court held that the means by which the signature was applied to the page was immaterial. The intention of the testator was for the mark applied to the page to stand for and represent his signature.

Conduct Rules

The Solicitors' Conduct Rules state at 14.07 that:

1. The bill or letter accompanying the bill should be signed by the principal or a partner of the firm

This is a reference to s 69 of the Solicitors' Act 1974, which acts as a precondition to the commencement of proceedings to recover the costs set out in the bill. Sub-section 69(2) permits a partner to sign in their own name or that of the firm. The signature may appear in a letter accompanying the bill or on the bill itself.

The bill must be either personally served, sent by post or left for the client at his place of business, home or last known place of abode.

This provision initially caused us some concern. We wondered if we would be required to post the bill to the client if they failed to pay the bill, or where we decided to commence recovery proceedings. Using rudimentary principles of statutory construction, we concluded that we could attach an electronic signature to a bill of costs.

First, the *Interpretation Act 1978* defines “writing” to include ‘typing, printing, lithography, photography and other modes of representing or reproducing words in visible form’. It seems, on the face of this definition, that sending a bill in electronic format is acceptable. Second, the meaning of a document is considered by s10(1) of the *Civil Evidence Act 1968* which, states that a document includes ‘any disc, tape, soundtrack or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom’ and the *Civil Procedure Rules Part 31.4* (CPR) define the meaning of “document” as ‘anything in which information of any description is recorded’. Taken together, s10(1) of the *Civil Evidence Act 1968* and pt 31.4 of the CPR provide that a file in electronic format is considered a document, even though the emphasis is on the storage medium upon which the document is stored and its capacity to be reproduced in hard format.

Further, article 5(2) of the EU Electronic Signature Directive⁷ provides that an electronic signature is not to be ‘denied legal effectiveness and admissibility as evidence in legal proceedings solely on the grounds that it is - in electronic form’, a provision that is reflected in s7 of the *Electronic Communications Act 2000*, which provides that an electronic signature that is incorporated into or logically associated with a particular electronic communication or electronic data is admissible in evidence in relation to the question of authenticity.

Taken together, the mix of legislation and procedural rules appear to effectively expand the meaning of s 69 of the Solicitors Act. We now live in an age in which a great deal of business is conducted electronically, and it is only right that solicitors should take advantage of the new way of conducting business. We await a test case with some anticipation.

This brief note aims to illustrate that an electronic signature can be considered perfectly acceptable to sign a bill or costs. Moving with the times and using technology properly allows solicitors to demonstrate their awareness of the use to which technology can be made. ■

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⁵ (1956) 37 TC 79 AT 87.

⁶ 164 ER 1208.

⁷ Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (OJ 19.1.2000 L13/12).