



Neutral Citation Number [2022] EWHC 2574 (SCCO)  
Case No: SC-2022-APP-000546

**IN THE HIGH COURT OF JUSTICE**  
**SENIOR COURTS COSTS OFFICE**

Royal Courts of Justice  
London, WC2A 2LL

Date: 12/10/2022

**Before :**

**SENIOR COSTS JUDGE GORDON-SAKER**

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**Between :**

**Haskell Elias**  
**- and -**  
**Wallace LLP**

**Claimant**

**Defendant**

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**Mr Francis Kendall (of Kain Knight) for the Claimant**  
**Mr Martyn Griffiths (instructed by Wallace LLP) for the Defendant**

Hearing date: 26<sup>th</sup> August 2022  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....  
**SENIOR COSTS JUDGE GORDON-SAKER**

**Senior Costs Judge Gordon-Saker :**

1. At the hearing of this claim on 26<sup>th</sup> August 2022 I indicated that I would order that the claim be dismissed and that the Claimant should pay the costs of the Defendant, which I assessed summarily in the sum of £15,159.25. The claim was for the delivery of a bill under s.68 Solicitors Act 1974. I explained that, in my view, the Defendant had already delivered a final bill to the Claimant, but that I would set out the reasons for my decision in writing. The hearing had been listed for 2 hours and, given that the claim raised a number of novel issues, there was insufficient time to give judgment *ex tempore*. These are therefore the reasons for my decision. As I said at the hearing, time to appeal will not run until the date of this judgment and the order.
2. The Defendant is a firm of solicitors. Between July and October 2020 the Defendant was retained by the Claimant to act on his behalf in proceedings in the Business and Property Courts. Over that period, the Defendant issued 6 invoices:
  - i) 19<sup>th</sup> August 2020 for profit costs in the sum of £38,017 and disbursements of £800.50 (excluding value added tax). The bill was expressed as “To our interim professional charges in connection with the above matter for the period 27 July to 17 August 2020”.
  - ii) 19<sup>th</sup> August 2020 for counsel’s fees of £4,599 plus value added tax.
  - iii) 28<sup>th</sup> August 2020 for profit costs in the sum of £10,817.50 and disbursements of £20 (excluding value added tax). The bill was expressed as “To our interim professional charges in connection with the above matter for the period 18 to 27 August 2020”.
  - iv) 28<sup>th</sup> August 2020 for counsel’s fees of £2,875 plus value added tax.
  - v) 30<sup>th</sup> September 2020 for profit costs in the sum of £7,758.50 (excluding value added tax). The bill was expressed as “To our interim professional charges in connection with the above matter for the period 1 to 30 September 2020”.
  - vi) 15<sup>th</sup> October 2020 for profit costs in the sum of £1,903 and disbursements of £150 (excluding value added tax). The bill was expressed as:

“For the period from 1 October 2020 to date

To our professional charges in relation to advising regarding strategy and prospective application for an unless order, corresponding with Shepherd Wedderburn regarding further request for extension of time for service of defence and DM’s ongoing breaches of injunction order, advising and reporting to your [sic] throughout.”
3. The Claimant paid a sum on account of costs and £30,000 was received from the Claimant’s opponent under an interlocutory costs order. The total of the invoices is £80,168, of which £27,168 remains outstanding. In January 2022 the Defendant sent a letter before claim in respect of the outstanding balance. On 11<sup>th</sup> July 2022 the Claimant commenced this claim.

4. The Claimant's case is that the invoices are not statute bills, either interim or final, that they were not signed, that the emails which accompanied them were not letters for the purposes of the 1974 Act and that the invoices were not delivered to the Claimant.
5. The Defendant's case is that the invoices formed a *Chamberlain* bill, that they were signed, that the emails which accompanied them were letters for the purposes of the Act and that delivery of the invoices by email was effective.
6. Section 69 of the Solicitors Act 1974, insofar as relevant, provides:

69.—(1) Subject to the provisions of this Act, no action shall be brought to recover any costs due to a solicitor before the expiration of one month from the date on which a bill of those costs is delivered in accordance with the requirements mentioned in subsection (2) ...

(2) The requirements referred to in subsection (1) are that the bill must be—

- (a) signed in accordance with subsection (2A), and
- (b) delivered in accordance with subsection (2C).

(2A) A bill is signed in accordance with this subsection if it is—

(a) signed by the solicitor or on his behalf by an employee of the solicitor authorised by him to sign, or

(b) enclosed in, or accompanied by, a letter which is signed as mentioned in paragraph (a) and refers to the bill.

(2B) For the purposes of subsection (2A) the signature may be an electronic signature.

(2C) A bill is delivered in accordance with this subsection if—

(a) it is delivered to the party to be charged with the bill personally,

(b) it is delivered to that party by being sent to him by post to, or left for him at, his place of business, dwelling-house or last known place of abode, or

(c) it is delivered to that party—

(i) by means of an electronic communications network, or

(ii) by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible,

and that party has indicated to the person making the delivery his willingness to accept delivery of a bill sent in the form and manner used.

(2D) An indication to any person for the purposes of subsection (2C)(c)—

(a) must state the address to be used and must be accompanied by such other information as that person requires for the making of the delivery;

(b) may be modified or withdrawn at any time by a notice given to that person.

(2E) Where a bill is proved to have been delivered in compliance with the requirements of subsections (2A) and (2C), it is not necessary in the first instance for the solicitor to prove the contents of the bill and it is to be presumed, until the contrary is shown, to be a bill bona fide complying with this Act.

(2F) A bill which is delivered as mentioned in subsection (2C)(c) is to be treated as having been delivered on the first working day after the day on which it was sent (unless the contrary is proved).

.....

(5) In this section references to an electronic signature are to be read in accordance with section 7(2) of the Electronic Communications Act 2000 (c.7).

(6) In this section—

“electronic communications network” has the same meaning as in the Communications Act 2003 (c.21).

.....

7. Section 7(2) of the Electronic Communications Act 2000 provides that:

(2) For the purposes of this section an electronic signature is so much of anything in electronic form as—

(a) is incorporated into or otherwise logically associated with any electronic communication or electronic data; and

(b) purports to be used by the individual creating it to sign.

Are the invoices statute bills?

8. A solicitor’s retainer is an entire contract and, save in two circumstances, solicitors are not entitled to payment on account other than for disbursements. The exceptions are, first, where there is a natural break in protracted litigation and, secondly, where there is an agreement that the solicitor can submit interim statute bills.

9. The Claimant’s case as to why the invoices are not statute bills is not entirely clear. The claim form described them as:

“a series of invoices rendered by the Defendant law firm that contain fees which are of an interim and on account nature (i.e. NOT interim statute in nature) due to their: parsity [sic] of information; being unsigned; and being delivered by e-mail only with no express confirmation provided by the Claimant for such an approach to constitute valid service”.

The issue in the claim was identified as:

“are these invoices capable of being deemed interim statute invoices based on the level of detail provided within them as stand alone documents and/or has a final statute invoice covering these charges been rendered (with the latter question answered by the last of the invoices continuing with the word “interim”).

It is based on that simple factual basis that the Claimant seeks a declaration that no statute invoices, interim or final, have been rendered by the Defendant and that statute invoices be rendered in order for the Claimant to invoke his rights to have a Solicitors Act assessment of the fees and charges of the Defendant.”

10. In paragraph 14 of his skeleton argument Mr Kendall indicated that the Claimant did not accept that sufficient information had been provided in the invoices. However in his oral submissions he did not develop that, but addressed the Defendant’s contention that the invoices formed a Chamberlain bill. He pointed out that the last bill did not say that it was a final bill, there was no indication that it was a final bill, and that the series of invoices were not identified as a Chamberlain bill.
11. It is not the Defendant’s case that the first five invoices were interim statute bills and that the last was a final statute bill. Clause 5.1 of the Defendant’s terms of business entitled them to deliver interim bills but did not state that such bills would be final for the periods that they cover. That may well be why the Defendant contends that the bills formed a Chamberlain bill.
12. In *Chamberlain v Boodle & King* [1982] 1 WLR 1443 the terms of the Defendants’ retainer did not allow for self-contained interim bills, but did allow for regular “statements”. The retainer lasted for 6 months over the course of which they delivered 4 bills to the Claimant. The court concluded that there had been no natural breaks, but that the bills “should be regarded as one bill in respect of one complete piece of work, although divided into parts”. As the Claimant had demanded taxation of the last within one month, he was entitled to have the whole of it taxed.
13. In *Bari v Rosen* [2012] 5 Costs LR 851, the Defendant submitted 12 bills to his client over a period of 10 months, all of which were paid promptly. There was no contractual right to issue interim statute bills. The bills were treated as a series comprising a single bill, delivered at the date of the last in the series.
14. In *Vlamaki v Sookias & Sookias* [2015] 6 Costs LO 827 the solicitors delivered a series of bills to the client and then sent a letter to the client stating that while “there may be further unbilled time ... we are not proposing to invoice this and therefore there are no further sums due”. The Master concluded that the series of bills should be regarded as a single bill delivered on the date of the last. On appeal, Walker J decided that there had been no final bill. The letter did not change the nature of the bills.
15. In the present case, the last invoice was not marked as “final”. However, unlike the earlier invoices for profit costs, it did not refer to “interim professional charges”. More significantly, in my view, the email dated 16<sup>th</sup> October 2020 from the Defendant to the Claimant, and to which the invoice was an attachment, referred to it as the “final

invoice” and requested payment of the balance due so that the papers could be released to the Claimant’s new solicitors. The invoice covered the period “from 1 October 2020 to date”. It seems to me that this was clearly the final invoice. *Vlamaki* can be distinguished because, in the present case, the email enclosing the letter made it clear that this was the final invoice of a series as well as that the Claimant would receive no further bills from the Defendant.

16. A bill must contain sufficient information to enable the client to obtain advice as to its detailed assessment. In *Ralph Hume Garry v Gwillim* [2003] 1WLR 510, the Court of Appeal considered whether a series of bills submitted by the claimants to the defendant complied with section 69 of the 1974 Act. Ward LJ summarised the authorities:

63 I accept the principle expressed in Lord Campbell CJ’s judgment in *Cook v Gillard* 1 E & B 26 , 36–37 that:

the defendant who undertakes to prove that the bill is not a bona fide compliance with the Act cannot found an objection upon want of information in the bill, if it appears that he is already in possession of that information ... a client has no ground of objection to a bill who is in possession of all the information that can be reasonably wanted for the consulting on taxation.

In *Eversheds v Osman* [2000] 1 Costs LR 54 , 61–63 Nourse LJ posed this test in not dissimilar terms, viz: is the client unable to judge as to the justice of the amount of the fees which are charged?

...

64 Thus I would accept the proper principle to be that there must be something in the written bill to indicate the ambit of the work but that inadequacies of description of the work done may be redressed by accompanying documents (as in *Eversheds v Osman* where it was doubtful whether the bill on the face of it would have been sufficient) or by other information already in the possession of the client. That, it seems to me, would serve the purpose of the Act to give the client the knowledge he reasonably needs in order to decide whether to insist on taxation. If the solicitor satisfies that then the bill is one bona fide complying with the Act.

...

70 This review of the legislation and the case law leads me to conclude that the burden on the client under section 69(2) of the Solicitors Act 1974 to establish that a bill for a gross sum in contentious business will not be a bill “bona fide complying with this Act” is satisfied if the client shows: (i) that there is no sufficient narrative in the bill to identify what it is he is being charged for, and (ii) that he does not have sufficient knowledge

from other documents in his possession or from what he has been told reasonably to take advice whether or not to apply for that bill to be taxed. The sufficiency of the narrative and the sufficiency of his knowledge will vary from case to case, and the more he knows, the less the bill may need to spell it out for him. The interests of justice require that the balance be struck between protection of the client's right to seek taxation and of the solicitor's right to recover not being defeated by opportunistic resort to technicality.

...

73. I add this postscript for the profession's consideration so that an unseemly dispute of this kind does not happen again. Surely in 2002 every second of time spent, certainly on contentious business, is recorded on the account department's computer with a description of the fee-earner, the rate of charging and some description of the work done. A copy of the printout, adjusted as may be necessary to remove items recorded for administrative purposes but not chargeable to the client, could so easily be rendered and all the problems that have arisen here would be avoided. In these days where there seems to be a need for transparency in all things, is a printout not the least a client is entitled to expect?

17. In the present case each of the invoices, apart from those for counsel's fees and the last invoice for profit costs, were accompanied by time records. They were sent as an attachment to an email which preceded that which attached the invoice. The time records described the work done in respect of each item, the time spent, the fee earner involved and the hourly rate applied. That, it seems to me, provided sufficient information to the client to enable him to form a view as to the reasonableness of the charges.
18. The last invoice, dated 15<sup>th</sup> October 2020, was not accompanied by the relevant time records. However, the Claimant determined the Defendant's retainer on 12<sup>th</sup> October and so, at most, the invoice covered 12 days' work and the amount of profit costs billed was only £1,903. With value added tax, that is less than 3 per cent of the total billed. Unlike the other invoices, there is a description of the work done; although not a description of every item of work done. Taken by itself, it seems to me that the description is sufficient information to enable the client to form a view as to the reasonableness of the charges.
19. However, given my view that the invoices formed a Chamberlain bill, the overall level of information across the 6 invoices was clearly sufficient.

Were the invoices signed?

20. It is not in issue that the invoices did not have a "wet ink" signature. Until somebody printed them, they existed only as an electronic file.

21. Each invoice bore the name “Wallace”, a “W” logo and the firm’s physical address, telephone number and website address. In appearance, therefore, they were not dissimilar to a paper invoice printed on a firm’s pre-printed letterheaded stationery.
22. Mr Griffiths submits that the printed name “Wallace” satisfies the definition of a signature in s.7(2), namely “anything in electronic form ... incorporated into ... any ... electronic data ... and [which] purports to be used by the individual creating it to sign”.
23. In *Neocleous v Rees* [2019] EWHC 2462 (Ch) the issue was whether an exchange of emails could constitute a signed contract for the disposition of an interest in land for the purposes of s.2 Law of Property (Miscellaneous Provisions) Act 1989, where the purported signature of the defendant’s solicitor was the automatic generation of his name, occupation, role and contact details. While not expressly relying on the 2000 Act, HHJ Pearce concluded that the email footer was applied with authenticating intent. Even though it was generated automatically, the rule that it be added had involved a conscious action and the author knew that his name was being added to the particular email.
24. While, in the present case, “Wallace” was incorporated into the electronic invoice, I find it difficult to conclude that the individual creating it purported to use the name to sign the invoice. I would assume that whoever created the invoice simply used a template which had the name and address included. The name is obviously just that – the name of the firm, as on a letterheading, rather than a signature.
25. Further there is no evidence that the person who created the invoice was “the solicitor or ... an employee of the solicitor authorised by him to sign” for the purposes of s.69(2A) of the 1974 Act. Presumably the person who created the invoice was authorised to create it, but there is no evidence that he or she was authorised to sign it.
26. However I would reach a different conclusion in relation to the emails which accompanied the invoices. Each of them concluded:

Best regards,

Alex

Alexander Weinberg  
Partner

[telephone numbers, firm name and physical and website addresses]
27. Everything below the typed name “Alex” has the appearance of being generated automatically. It may well be that the words “Best regards” and “Alex” were also generated automatically.
28. If the name “Alex” was not generated automatically, then it is easy to see that it is a signature which falls within the definition in s.7(2). Clearly it purported to be used as a signature.
29. If the named Alex was generated automatically, following *Nucleous*, the automatic generation would not take it outside the definition. The email footer was clearly applied with authenticating intent, even if it was the product of a rule.



30. So, in my judgment, the electronic signatures on the emails were electronic signatures for the purposes of s.69(2B). The question then arises as to whether the emails were letters for the purposes of s.69(2A)(b).

31. “Letter” is not defined in the 1974 Act. In common usage, an email beginning with the salutation “Dear” and ending with felicitations might be thought of as a letter. However the OED definition might suggest otherwise:

“A written communication addressed to a person, organization, or other body, *esp.* one sent by post or messenger; an epistle.”

Definitions in other statutes, for example that in s.125 of the Postal Services Act 2000, would also suggest a requirement of physicality:

“letter” means any communication in written form on any kind of physical medium to be conveyed and delivered otherwise than electronically to the person or address indicated by the sender on the item itself or on its wrapping (excluding any book, catalogue, newspaper or periodical); and includes a postal packet containing any such communication”

32. Such a definition should of course be viewed in the context of the particular statute. A definition of letter in a statute dealing with the physical carriage of post may well be different to that in a statute concerned with the communication of information. Given that the point is not clear, I think that it would be difficult to conclude that an email is a letter for the purposes of the 1974 Act without applying an updating construction to that particular statute.

33. It is clear that the courts will apply an updating construction to legislation unless the particular Act is intended to apply as it was passed and without change: *Bennion, Bailey and Norbury on Statutory Interpretation* (8<sup>th</sup> ed) section 14.1. There is nothing to suggest that Parliament intended that the 1974 Act should be preserved in *aspic*. Indeed the amendments which recognised the use of electronic signatures make that clear.

34. In *Attorney General v Edison Telephone Co of London Ltd* (1880) 6 QBD 244, the question was whether communications by telephone, invented after the Telegraph Act 1869, fell within the definition of “telegram” in that Act. The Postmaster-General had the exclusive right of transmitting telegrams. Stephen J noted that the purpose of the Act was to create that monopoly and that:

“Of course no one supposes that the legislature intended to refer specifically to telephones many years before they were invented, but it is highly probable that they would, and it seems to us clear that they actually did, use language embracing future discoveries as to the use of electricity for the purpose of conveying intelligence.”

35. It could be argued that the omission to amend the reference to “letter” to include an email was intentional. However I do not have the material to conclude whether that was intentional or an oversight.

36. In my view the purpose of s.69(2A) is to convey to the client that the bill has been authorised by the solicitor. That can be done by either a signature on the bill or a signature on the communication that accompanies the bill. In my experience solicitors' bills are sent to clients either by post, usually with an accompanying letter, or by email. Sometimes they are sent by both means. It would, as Mr Griffiths submits, be absurd if a solicitor, sending a bill by email, were required to send, as another attachment, a letter in pdf form which contained no more information than that contained in Mr Weinberg's email.
37. Accordingly, in my judgment, applying an updating construction, an email is a letter for the purposes of s.69(2A)(b).

Were the invoices delivered to the Claimant?

38. It is not in issue that the invoices were sent to the Claimant as attachments to emails only. In his skeleton argument and in his oral submissions Mr Kendall submitted that the Claimant's consent to clause 24.3 of the Defendant's terms of business was not informed consent and that the Claimant had not indicated his willingness to accept delivery by email.
39. Clause 24.3 provided that:
- “You [the client] agree that we may serve formal notices and documents (including service of any legal proceedings) upon you by email, or any other method of electronic communications permitted by law, by using any email address or other electronic identification that you have provided to us, or that you have used for communicating with us.”
40. While we await the decision of the Court of Appeal in *Cam Legal Services Ltd v Belsner*, the issue in that case is whether informed consent is required in respect of an agreement which expressly permits payment to the solicitor of an amount of costs greater than that which the client could recover from the opponent. It has never been the case that a provision in a solicitor's retainer as to the mode of service of documents requires the informed consent of the client. It is not in issue that the Claimant agreed to the Defendant's terms of business.
41. While, as Mr Kendall submitted, clause 24.3 does not specifically refer to bills or invoices, it does refer to “documents”. It seems to me that the clear intention is that the solicitor is permitted to send documents by email, including formal documents, and that must include invoices. It would be absurd if the solicitor were permitted to serve a claim form in respect of unpaid fees by email but not the bill on which the claim was based.
42. In my judgment, by clause 24.3 the Claimant had indicated his willingness to accept delivery of bills by email. However, in any event, it is clear from the correspondence exhibited to the witness statement of Ms Asher that the Claimant was willing to communicate and to receive communications by email at the address that he used. As she explains in paragraph 53, at the outset of the retainer, the Claimant's daughter provided his email address. It has not been suggested that she was not authorised to do so. The Claimant returned his acceptance of the Defendant's terms by email. He responded by email to the emails sending him the invoices. He determined the

Defendant's retainer by email. By this course of conduct, including his acceptance of the first 5 invoices by email, the Claimant indicating his willingness to accept delivery of bills by email.

43. Accordingly I am satisfied that the invoices were delivered to the Claimant for the purposes of s.69(2C).
44. Mr Kendall made it clear, both in his skeleton argument and his oral submissions, that the Claimant's aim is to obtain a detailed assessment of the invoices. It follows from my decision that he will now need to show special circumstances and Mr Kendall was keen to tell me what they might be. However as the relief sought is limited to the delivery of a bill, whether there should be an order for detailed assessment does not arise. As Mr Kendall pointed out, even if the court does not order detailed assessment, if the Defendant sues for the outstanding fees, the Claimant may well obtain an order for a quantum meruit assessment. At the risk of repeating what I said at the hearing, the parties would be well advised to talk to each other to try to reach an accommodation which would avoid further costs.