

Electronic Signature Cases – English Law

Court Support for Electronic Signatures in England and Wales

Overview of Applicable Case Law

There are relatively few judicial decisions addressing the validity of electronic signatures in England and Wales. The lack of cases is likely to reflect a strong consensus that, as a general matter, a signature in electronic form is legally capable of operating as a signature. As the September 2019 Law Commission Report on Electronic Execution of Documents observed:

“An electronic signature is capable in law of being used to execute a document (including a deed) provided that (i) the person signing the document intends to authenticate the document and (ii) any formalities relating to execution of that document are satisfied.”

There is also support for this in the Golden Ocean Court of Appeal case discussed below.

When judicial decisions have arisen, the dispute has tended to be about whether a specific statutory signature requirement was satisfied, whether informal insertion of a name was intended to be a signature, or whether the correct person applied the electronic signature. This paper gives examples of such cases.

Although informal electronic signatures, such as typing a name at the end of an e-mail, can readily count as a signature in English law, they, however, have greater potential to give rise to uncertainty and disputes than does an electronic signature applied using the kind of structured processes and evidential records available in an electronic signature signing platform, such as DocuSign eSignature.

The case law on electronic signatures is best understood with an appreciation of the legal function of signatures. Usually, when we sign documents, there is no actual legal requirement to use a signature. We sign voluntarily, to show that we associate ourselves with the contents of the document – be it a letter, a contract, an acknowledgment of receipt or some other kind of legally significant document. For a contract, the act of signing also shows that we intend to conclude the contract and be bound by its terms.

With that background in mind, certain key themes emerge.

“I agree with the report’s conclusion that formal primary legislation is not necessary to reinforce the legal validity of electronic signatures. The existing framework makes clear that businesses and individuals can feel confident in using e-signatures in commercial transactions.”

Robert Buckland (Lord Chancellor and Secretary of State for Justice), responding for the government to the Law Commission Report on Electronic Execution of Documents in a written Parliamentary answer on 3 March 2020.

Key Themes

Where there is no legal obligation to use a signature and no other formality requirement, the position is simple: English law recognises electronic signatures. The signature does not have to be technically sophisticated. In English law something as informal as a name typed at the end of an email can be a signature, as can a scanned signature.

For most everyday situations, the same will also apply where there is a legal requirement for a signature. The court decisions upholding informal electronic signatures have all, in fact, arisen in that context (see Box A below).

Use of a more rigorous electronic signing platform like DocuSign eSignature does offer additional advantages over this more informal electronic signature recognized by the courts, thereby further strengthening the enforceability of such agreements (see Comparison section and Box B below).

Lastly, for a particular kind of document or transaction, the ability to use an electronic signature is subject to specific formalities that may be laid down (see Formalities Requirements section below).

Box A: Cases in which an informal electronic signature has been held to satisfy a statutory requirement for a signature

Golden Ocean Group Ltd v Salgaocar Mining Industries PVT Ltd

(2012) EWCA Civ 265

Informal e-mail signature held to satisfy the Statute of Frauds 1677.

This case concerned a contract of guarantee, which under S.4 of the Statute of Frauds 1677 had to be signed by or on behalf of the guarantor in order to be enforceable. The contract was said to be formed in a series of e-mails. It was common ground between the parties in the Court of Appeal that for the purposes of s.4 **“an electronic signature is sufficient and that a first name, initials, or perhaps a nickname will suffice”**.

Bassano v Toft

(2014) EWHC 377

Clicking on an “I accept” button held to satisfy a statutory requirement for a signature.

This case concerned a consumer loan agreement, which under consumer credit legislation had to be signed by the borrower. **The judge held that clicking on an “I accept” button in an electronic document satisfied the signature requirement.**

Neocleous v Rees

(2019) EWHC 2462

Informal e-mail sign-off plus auto-appended name and contact details held to satisfy statutory requirement for a signature.

In English law a contract for the sale of land must be “signed by or on behalf of” the seller and purchaser. In this dispute, the seller’s solicitor sent an e-mail offering terms for the sale of his client’s land. He finished ‘Many thanks’, then pressed Send. The firm’s e-mail system automatically appended his name and contact details to the foot of the e-mail. The purchaser’s solicitor accepted the offer. **The judge rejected an argument that a handwritten name, or at least a facsimile of such handwriting, was required.**

Comparison: Informal electronic signature versus a signing platform

Although an informal electronic signature is capable of constituting a signature, it does carry greater evidentiary and enforceability risks.

- It may be unclear whether the name inserted in the document was intended to be a signature at all.
- An informal electronic signature can easily be copied.
- An easily amended electronic document signed with an informal electronic signature may be thought to be less robust than a paper-based traditional wet-ink signature.
- It may be unclear whether a required formality was complied with.

It may be necessary to produce evidence, perhaps long after the event, of the processes that were followed for any given signed document and what the contents of the document were. This evidence might be needed in court, or perhaps in other situations such as due diligence or inspection by auditors. Uncertainty may invite litigation. Such disputes are liable to be highly fact-sensitive (see examples in Box B below). In contrast, an electronic signing platform, such as DocuSign eSignature, provides a structured electronic signing process including an audit trail or certificate of completion, that provides enhanced evidence of the transaction history to further strengthen the enforceability of the document.

Box B: Electronic signature cases on intent to sign

Mehta v J Pereira Fernandes SA (2006) EWHC 813

The sender's automatically inserted e-mail address was not included with intent to be a signature.

Under S.4 of the Statute of Frauds 1677 a guarantee had to be signed by or on behalf of the guarantor in order to be enforceable. Mr Mehta's name or initials did not appear at the end of the e mail or anywhere else in its body. **The judge was in no doubt that if someone creates and sends an electronically created document, then he will be treated as having signed it to the same extent that he would be treated as having signed a hard copy of the same document.**

However, he rejected the argument that the appearance of Mr Mehta's email address at the top of the email was a signature for the purposes of the section, since it had not been included with the intention of giving authenticity to the document. **Its inclusion was not intended as a signature.**

Green v Ireland (2011) EWHC 1305

Clicking on an "I accept" button held to satisfy a statutory requirement for a signature.

This case concerned an alleged email contract to create a charge over land. Under the relevant legislation it had to be "signed by or on behalf of" the respective parties. **There was no dispute that they had, by inserting their names at the end of the emails that they had sent, signed them for the purposes of the legislation.**

Golden Ocean Group Ltd v Salgaocar Mining Industries PVT Ltd (2012) EWCA Civ 265

Informal e-mail signature held to satisfy the Statute of Frauds 1677.

This guarantee case is summarised above. It was common ground that for the purposes of s.4 of the Statute of Frauds "an electronic signature is sufficient and that a first name, initials, or perhaps a nickname will suffice". However, there was an issue as to whether the informal sign-off 'Guy' was intended to be a signature.

The judge held that the sender put his name, Guy, on the email so as to indicate that it came with his authority and that he took responsibility for the contents. It was an assent to its terms. He had no doubt that that was sufficient authentication.

Neocleous v Rees (2019) EWHC 2462

Informal e-mail sign-off plus auto-appended name and contact details held to satisfy statutory requirement for a signature.

This sale of land case is summarised above.

The name and contact details of the seller's solicitor had consciously been entered into the firm's e-mail settings by someone at some stage. The solicitor knew that the system would automatically append his name and contact details. Writing 'Many thanks' at the end of the e-mail suggested that he was relying on that happening.

In those circumstances it was difficult to distinguish that process from manually adding the name each time an e-mail was sent. The recipient would have no way of knowing whether the details had been added manually or automatically. **Objectively, the presence of the name indicated a clear intention to associate the sender with the e-mail – to authenticate or sign it.**

DocuSign provides a structured technical environment and step by step process for electronically signing documents. The process makes clear to the signatory before signing that what they are about to do is sign the document.

Document integrity

An informal electronic signature leaves open the possibility of dispute about what the signed document consists of, and whether it might have been altered subsequently. Secure storage of the signed document and associated signatures reduces this risk.

Identity of signatory

What if the signatory subsequently denies that they signed the document? Can we prove that it was them? Many businesses wish to have the flexibility to choose a level of identity assurance that reflects the nature of the document and the value and importance of the transaction.

Overall, it is normally open to a business to choose the kind of electronic signature that it considers suitable for the transaction. Sophisticated cryptographic digital signatures offer a higher assurance level of document integrity and identity of a signatory. However, experience suggests that for most transactions businesses have taken a pragmatic view that this heightened technological level of assurance is not needed or required.

If the law requires a signature to be applied in a particular place in a document (a requirement of form), that would have to be complied with whether the document is paper or electronic.

Bassano v Toft (2014) EWHC 377

Clicking on an "I accept" button held to satisfy a statutory requirement for a signature in a specified location in the document.

This case is summarised above. Legislation required the borrower's signature to be applied at a particular place in the loan agreement. When the borrower clicked an 'I accept' button, that action inserted her name in a document. Although the name was in the wrong place, the 'I accept' button was in the right place. The judge held that since "I" constituted the signature, the location requirement was satisfied.

If the law requires a signature to be applied personally by the signatory (a process formality), then an electronic signature applied by someone else (such as an assistant) would not suffice.

Kassam v Gill (13 August 2018) Birmingham County Court,

Entry of signature details in an online form by an agent did not comply with court rules..

In this case the claimants made use of a court-provided online claims system to issue proceedings to recover possession of a property. Court rules stipulated that a Statement of Truth was duly signed by a signatory "entering his name on an online form".

To assist them, the claimants employed an agent who registered their details, including their names, on the system. When generating the claim form one of the claimants ticked the 'Statement of Truth' box. At the end of the process the system generated a document and populated the Statement of Truth signature box from the registration information. The court held that since it was the agent who had entered the names on the system, the signature requirement was not satisfied.

There are two formalities requirements that are now uncommon in English law:

- If the law required a paper document (a medium formality), then it would not be possible to use an electronic signature even if the law says nothing about the kind of signature that can be used. Usually, a requirement of writing does not need paper.
- If the law required a manuscript signature, then an electronic signature would not suffice. As illustrated in the cases above, a generally expressed signature requirement can typically be satisfied by an electronic signature. Wills are an example of a document for which a manuscript signature is probably still required.

Other examples of formalities requirements could include: a specific kind of electronic signature; witnessing; a requirement that a single unique document be signed; notarisation; filing at an external registry. It should also be borne in mind that even if the general English law does not lay down a formality, a private document (such as a contract, trust document or corporate constitution) may do so; or, in a transaction with cross-border aspects, the laws of another country may be relevant.

Many varieties of English law formality requirement are capable of being satisfied using an electronic signing platform, such as DocuSign eSignature. Care is still necessary to ensure that the chosen kind of signature and signing process does comply with the formality requirement, and that the processes have been used appropriately.

While it is important to be aware of formalities requirements, they are unlikely to preclude everyday commercial use of electronic signatures in most situations. Generally speaking, the law of England and Wales takes a liberal and facilitative approach to signatures. That applies to the electronic environment as well as in the paper world – an approach that is reflected in the court decisions discussed in this White Paper.

Disclaimer

The information in this White Paper is for general information purposes only and is not intended to serve as legal advice. It is limited to the laws of England and Wales. Laws governing electronic signature may change quickly, so DocuSign cannot guarantee that all the information in this White Paper is current or correct. Should you have specific legal questions about any of the information in this White Paper, you should consult a suitably qualified legal practitioner.

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