

By Stephen Mason, author of *Electronic Signatures in Law* (LexisNexis Butterworths, 2003) and editor of the *e-Signature Law Journal*

A brief history of the cases that have been brought before the courts where a mark served as a substitute for using a manuscript (handwritten) signature to sign a document.

The seal

Judges have taken a practical view towards the application of a signature to a document. The earliest reported case is that of *Lemayne v Stanley* 1681, where it was accepted that a seal was one way of indicating a person signed a document. The *Electronic Communications Act 2000* and cases decided in the twentieth century mean the use of a seal may well be acceptable today, as it has been in Japan for over 1,000 years.

The use of a stamp

Jenkins v Gainsford and Thring

Towards the end of his life, Mr Jenkins had great difficulty in writing and signing his name, so he had an engraving of his signature made. When he needed to sign a document, he would direct Henry Atkins, his amanuensis, to affix an impression of his name to the document by using the engraving. Mr Jenkins left a will, duly executed, on 14 April 1862. He also executed two codicils. Mr Atkins was one of the subscribing witnesses to both codicils to the will. He gave evidence as to how he affixed Mr Jenkin's signature to the documents. He said he was ordered and directed by Mr Jenkins to affix the signature to the codicil using the engraving, in the presence of the other subscribing witness. After the signature was affixed, Mr Jenkins placed his hand on the codicil and acknowledged the signature as his own, and said the codicil was to be a codicil to his will. The two witnesses then attested and subscribed the codicil. The same procedure was followed on both occasions. Sir C Cresswell held that the codicils were duly executed, and observed:

“Now, whether the mark is made by a pen or by some other instrument cannot make any difference, neither can it in reason make a difference that a facsimile of the whole name was impressed on the will instead of a mere mark or X.”

The point is, the instrument or stamp was intended to stand for and represent the signature of Mr Jenkins. The form the signature took was not relevant, so much as the evidence surrounding the affixing of the stamp, which went to show that he intended to be bound by the content of the codicils.

Guiding a hand in making a mark

There are occasions when a person may be too ill to sign a document. When this happens, the question is whether there is any evidence to demonstrate the person intended to sign. In *Wilson v Beddard* 1841, Mr Wilson made a will on 7 September 1826 and died the following day. The will was signed by his mark, and his hand was guided by another person. Before making the mark, Mr Parker made faint strokes on each of the sheets containing the will. It was accepted that he signed the will because the act of making the faint strokes provided evidence that he intended to sign, and his mark was no less of a signature because somebody helped him.

Electronic signatures

The *Electronic Communications Act 2000* permits the use of electronic signatures. There are various types of signature, all of which can demonstrate the intent of the signing party to sign. The different types are:

- Typing a name into a document, such as an email. This was accepted in the Industrial Tribunal case of *Hall v Cognos Ltd* 1997. A series of emails between Mr Hall and his line manager and personnel were held to be signed when printed, and varied the terms of the written contract of employment.
- Clicking the "I accept" icon to confirm that you wish to enter a contract when buying goods or services electronically.
- A Personal Identification Number (PIN), used to obtain money from cash machines or to 'sign' a credit card with a PIN number.
- A biodynamic version of a manuscript signature; a special pen and pad measure and record the actions of the person as they sign. This creates a digital version of the manuscript signature. The file can then be attached to electronic documents.
- A scanned manuscript signature; a manuscript signature is scanned and transformed into digital format, which can then be attached to an electronic document.
- The digital signature, which uses cryptography. The signing party uses a key pair (private and public key). The sender affixes the signature using their private key, and the recipient checks the signature with the public key.

To sum up, English judges have taken a pragmatic approach to the manuscript signature. In essence, a signature can take any form, providing it acts to prove the person intended to sign the document. © *Stephen Mason, 2005*

The Ataxian 151 2005:15

Patrick McCurry reports

Most people take signing their name for granted. But for people with ataxia or other degenerative conditions a simple signature can become a major struggle. Using credit or debit cards, signing or paying in cheques, and even joining the local video shop can become a challenge.

The issue was highlighted recently by a case supported by the Disability Rights Commission (DRC) against a utility company. Valerie Dexter, who has a neurological impairment that causes her to shake, found that the company, npower, had got her neighbour to countersign a contract without her knowledge or permission. The County Court found that the company's action was discriminatory and ordered it to pay compensation. DRC chair Bert Massie said the case showed that disabled people must not be treated as if they are unable to make decisions and that businesses could not make sweeping judgments about who was, or was not capable of managing their affairs.

Guidance from the British Bankers' Association (BBA) states that English law recognises as a valid signature not only one written manually by the signatory but also one appropriately embossed using a facsimile signature stamp. Another option is obtaining a power of attorney so that someone else can sign documents on the signatory's behalf, although this means handing over responsibility for one's affairs to someone else. It is also probably impractical for day to day transactions like shopping.

Chris Dymond, Branch Secretary of the Central Ataxia Branch of Ataxia UK, began to find about five years ago that it was becoming harder and harder for him to write his signature. One symptom was 'intention tremor' in which his hand would begin shaking even at the thought of writing. 'I work in a building society and it was taking me so long to sign my name that one of the cashiers suggested I get a stamp and that's what I've been using ever since says Chris. He went to a local stationers in Wolverhampton and, after providing documentation with his normal signature, obtained a stamp for £15.

I just press the stamp down, usually with my left hand, the signature appears' he says. 'It's self-inking so I don't have to worry about it leaking ink into my pocket'. Chris did explore other options, such as learning to sign his name with his left hand, but was told by a neurologist that there would be a risk that the unsteadiness affecting his right hand could then spread to his left.

Of course, there are particular issues that using a stamp raises. One is security as there is a risk that if it were stolen it could be used by anyone. 'I make sure I don't leave it with my cheque book or in the car where it could be stolen, although in my experience most people don't know what it is from looking at it. He also needs to use the stamp on every sheet of paper in, say, a credit card transaction because the stamp does not penetrate carbon paper. When shopping Chris makes sure he carries other identification, such as a driver's licence, as well as a letter from his GP explaining his medical condition.

In general he has had little problem with shops or other businesses in using the stamp, although he says that he has found that for shops that do not know him it is usually better to wait until they ask for further identification rather than producing documents and letters and so on, the shop staff can get suspicious so I usually wait for them to ask.

Credit and debit cards are generally preferable to cheques because, even though cards do require a signature they require nothing further. Cards can also be used over the phone. Telephone and internet banking can also reduce the need to sign, as bills can be paid by security passwords and other mechanisms. Rebecca Howard, a legal officer at the DRC, says banks will make special arrangements for people who can't give signatures, providing the individual has a letter from their doctor confirming their condition. 'Some banks provide bank cards with photos of the holder on them so that they don't have to sign and some will accept unsigned cheques as long as there is other identification' she says.

The BBA provides a number of suggestions for people finding it difficult to sign their name. One option is shortening the signature so that, for example, Josephine Kirkpatrick becomes J.Kirk, which is acceptable providing she tells the banks this is how she intends to sign.

For those whose problem is less severe it suggests using thick or felt tip pens to make writing easier and, if gripping is difficult, using adapted pens and pen grips. Clip boards or non-slip mats can be used to prevent paper slipping. A weighted cuff can reduce tremor or a plastic template for those with difficulties keeping their signature in the right place. Some banks provide cheque book templates and/or credit or debit card templates, says the BBA. These are plastic overlays that assist the customer to position where the signature needs to be.

But what if your bank or business won't accept your form of signature? As Rebecca Howard points out, you also have your rights. Businesses such as banks are not told they must have specific measures, such as photo bank cards, in place for people unable to give signatures: 'But they must have something in place in order to avoid discriminating against disabled people and so each bank will approach it in its own way. These individuals are perfectly capable of entering into legally binding agreements and it's about how the banks can facilitate that'.

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