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Shepherd Construction Limited v Pinsent Masons LLP

No duty on a solicitor to keep earlier advice under review

On 13 January 2012, Mr Justice Akenhead in [Shepherd Construction Limited v Pinsent Masons LLP](#) [2012] EWHC 43 (TCC) clarified the scope of a solicitor's retainer and any implied duty to keep earlier advice under review.

Antony Smith and James Hutchinson of Beale and Company acted for Pinsent Masons.

Background

Shepherd alleged professional negligence against Pinsent Masons and its predecessor firms (the "Defendants") relating to advice given on the effectiveness of "pay when paid" clauses and the impact of The Enterprise Act 2002 on those clauses.

Shepherd sought to amend its pleadings to develop the concept of a "single contract". It argued its relationship with the Defendants was in the nature of a single contract or retainer. A term was implied into that contract that there was an on-going duty upon successive Defendants to review the suitability of drafting amendments and/or drafting advice previously provided to Shepherd, in light of legislative and other legal developments. The Defendants applied to strike out those amendments.

Decision

Akenhead J held that Shepherd's requested amendments alleging a single contract should not be allowed and the parts of its original pleadings alleging a single contract should be struck out.

He stated that it would be "*commercially and professionally worrying if professional people are to be held responsible for reviewing all previous advice or indeed services provided.*"

The Court gave the following reasons for its decision:

1. A solicitor's functions and responsibilities must primarily be determined by his or her retainer.
2. There was no suggestion or assertion that there was any express agreement, oral or otherwise, by which the single contract between Shepherd and the Defendants was concluded. The fact that there were specific commissions militates against the implication of a general retainer.
3. There was no suggestion that Shepherd ever made or was asked to make any payments in relation to a single contract.
4. The placing of specific commissions on a more or less informal basis, even if there are a large number of them, cannot give rise to a necessary implication that there is an overarching general retainer.
5. Sending client briefings, marketing materials and seminar invitations to Shepherd did not give rise to any such implication either.
6. The involvement of the same personnel even over many years is common in a commercial legal context and does not give rise to any such implication either.
7. Shepherd's amended pleadings did not show how a single contract could operate across Pinsent Masons and its predecessor firms.

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Conclusion

This is a pragmatic judgment which will be welcomed by the legal profession. If solicitors were entitled to charge for keeping all earlier advice and drafting under review, that could well involve, say, once or twice a year reviewing the earlier advice and, as appropriate, writing to the client about the results of the review. The costs of reviewing could run into many thousands of pounds, particularly if reasonable research into legislative changes and current legal decisions was included. It is unlikely that clients would be prepared to pay for such reviews, particularly if the outcome was that the earlier advice did not need updated.

A solicitor is not a form of insurance policy for a client. There is no general obligation on a solicitor to keep his client informed of any changes in the law or indeed anything which might significantly impact on the earlier advice or drafts.

For further information, please contact [Antony Smith](#) on 020 7420 8704 or [James Hutchinson](#) on 020 7420 8653.

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