

Signed, Sealed & Delivered? Perhaps not...

The issue

According to a recent High Court case (*Bibby Financial Services Ltd v Magson* [2011]), it was held that a document was unenforceable and had not been "delivered" (meaning that it had not been released to the other party) even though it had been signed and handed over to the other party with the benefit.

The facts

The case involved the giving of a guarantee during an informal meeting with the beneficiary of the guarantee (B). The guarantor (G) made manuscript amendments to the form of guarantee prepared by B, indicating the changes that G required. B asked G to sign the guarantee, and further clean copies were to be circulated and signed, to give comfort to B's colleagues. G obliged.

When B sought to enforce the guarantee, the Court held that the document was unenforceable on the basis that:

- the person signing the deed must have separately indicated that he intended to be bound by it
- mere signature of the guarantee by G was not enough
- the guarantee had been signed on the basis that new copies would be produced to incorporate the manuscript amendments and re-circulated for signature
- the fact that the guarantee was handed to the party with the benefit (i.e. B) was not sufficient evidence that it had been "delivered"

The solution

This case highlights the dangers of two, not uncommon, practices that are unsafe but often adopted by non-lawyers:

- signing documents in an unfinished form, with the intention of incorporating subsequent amendments and attaching the signature page to those documents
- signing and returning a deed to another party to be completed without indicating their intention to deliver and be bound by that deed

How can I protect myself?

Always seek legal advice before completing a deed to ensure that the document has been effectively delivered and that any manuscript amendments have been agreed by all parties, otherwise there is a danger that the deed may not be enforceable, even though, on the face of it, it has been signed and dated.