



A VICTORY FOR COMMON SENSE

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In the September 2008 issue of the Bulletin, I reported on the case of Richard Buxton, a solicitor who was prevented from recovering his costs as a result of 'wrongfully' terminating a retainer. This was a disappointing decision for the profession. It meant in practice that solicitors could not recover any costs where they ceased acting for a client because they were provided with instructions to pursue a hopeless claim.

Many disagreed with the decision, arguing that the profession needs as much flexibility as possible and that in today's tough economic climate it is just as important to be able to cease acting in appropriate circumstances as it is to take on new instructions.

Mr Buxton appealed the decision made by Mr Justice Mackay in the High Court. The Court of Appeal heard the case on 23 February 2010 and overturned the decision of the lower courts (*Buxton v Mills-Owen* [2010] EWCA Civ 122).

The Law Society was allowed to intervene in the appeal case because it successfully argued that the case raised an issue of considerable importance for the profession as a whole.

Lord Justice Dyson, who delivered the judgment said that there was "no comprehensive definition of what amounts to a good reason to terminate" as referred to in the Solicitors' Practice Rules 1990 and the Code of Conduct 2007.

The Court of Appeal took the approach that protecting clients from unreasonable termination of retainers was not sufficient justification for such a narrow interpretation of the phrase 'good reason'. All solicitors understood as officers of the court that they were under a duty not to present points to Counsel or the court that they did not consider to be properly arguable.

Consideration was also given to the overriding objective from the Civil Procedure Rules, enabling

the court to deal with cases justly. This objective could become somewhat obscured if solicitors feel obliged to present the court with arguments which are "bound to fail".

The court also discussed whether solicitors should use coded language to warn that they consider the argument to be weak or hopeless e.g. "I am instructed that". By using coded language, advocates give a signal to the bench that it is their belief that the argument will fail. The Court of Appeal indicated that such language should be avoided.

The Court of Appeal concluded that Mr Buxton had terminated the retainer for a good reason and was entitled to do so. As a result, he would be entitled to his proper costs and disbursements for all work done up to the termination of the retainer.

The President of the Law Society Robert Heslett commenting upon the judgment said:

"The judgment is an important clarification for our members who are faced with the difficult scenario of being instructed to make untenable arguments to court...Like any business, solicitors should be paid for the services they provide and be confident in refusing to make arguments which they do not think they can professionally articulate or which would breach their professional duties."

The decision of the Court of Appeal is important for the profession as a whole, and means that solicitors will not feel compelled to run a case to court that is doomed to disaster.

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