



The obligations of solicitors/professionals when responding to informal queries

Edesia Law

In July 2022 the Court of Appeal handed down its judgment in *Spire Property Development LLP & Anor v Withers LLP [2022] EWCA Civ 970*. The main judgment given by Lady Justice Carr will be of interest to solicitors and other professionals who receive informal queries/requests for advice from former clients in circumstances where there is no retainer covering the professional's response. It sets out a number of principles that will determine the extent to which the professional assumes responsibility in relation to responses to informal queries. It is evident that care must be exercised both by the professional, as to the terms in which they respond to queries and the client as to how such queries are expressed.

The background and details of the relevant principles can be found [here](#).

BACKGROUND

Withers LLP (“**Withers**”) acted for the claimants in 2012 with respect to the purchase for over £40 million, of two adjacent properties in Fulham, which the claimants intended to redevelop.

Following the purchase, in August and October 2013, it was established that there were three high voltage cables traversing the properties. These had not been revealed by any investigations carried out by Withers prior to the purchase. Relocating the cables would incur a not insignificant cost to the claimants. The claimants subsequently brought two claims against Withers.

The claimants alleged that Withers had failed to identify and report on the presence of high-voltage cables running across the properties prior to the claimants acquiring the properties (the “**First Claim**”).

The claimants further alleged that in 2014, in response to email correspondence, Withers had failed to: (i) advise the claimants of their rights against UK Power Networks; and (ii) advise on their potential right to compensation if UK Power Networks could not produce a wayleave evidencing their rights to maintain the high-voltage cables on the properties (the “**Second Claim**”).

HHJ Pelling QC found for the claimants on the First Claim and the Second Claim at first instance. He gave judgment for just in excess of £2 million in favour of the claimants (circa £600,000 for the First Claim and circa £1,300,000 for the Second Claim, plus interest), which was considerably less than the £9 million claimed.

Withers appealed against HHJ Pelling QC's decision on the Second Claim only. The Court of Appeal upheld the appeal.

THE PRINCIPLES THAT EMERGE FROM THE COURT OF APPEAL'S ANALYSIS

The judgment contains at paragraphs 56 to 61 a useful summary of the law on a solicitor's obligations owed: (i) under a retainer; and (ii) based upon assumption of responsibility.

In the present case, the issue concerned was liability on an assumption of responsibility basis and the scope of the assumption of responsibility. As Carr LJ indicates in the judgment, the drawing of analogies from the facts of prior cases is not helpful, as each case will turn upon its own facts insofar as they relate and engage the relevant legal principles.

Nevertheless, the judgment does outline some useful legal principles which will be instructive when considering the issues. In the context of assumption of responsibility, when responding to informal queries/requests for advice, the principles are that:

- a) a professional assumes a duty to exercise reasonable skill and care in giving the answers that the professional chooses to give to the specific questions asked of them;
- b) The scope of the assumption of responsibility on a given set of facts will depend upon an objective construction of the relevant exchanges between the parties;
- c) In carrying out this exercise in construction, the relevant exchanges are not to be read as if they were formal legal documents, and must be considered in the context that they were exchanged between the solicitor/professional and former client, who may be familiar to each other and involved in ongoing professional relationships on other matters;
- d) The experience and resources of the former client and their sophistication may be matters that will affect the scope of duty on an assumption of responsibility basis;
- e) Communications leading up to an exchange where advice is sought of the solicitor/professional by the former client may be used contextually in construing the scope of the assumption of responsibility;
- f) An objective interpretation of the exchanges between the professional and the client may indicate that the context for the communications is "*guarded and restrictive*" rather than "*open and expansive*". This is likely to alter the scope of the responsibility assumed;
- g) The uncertainty of the factual position at the time any advice is sought, is a significant contextual point to the issue of the scope of the responsibility assumed;
- h) The language of any requests for advice will be key. Requests for "*thoughts*" or to "*elaborate slightly*" are not likely to be construed as requests for definitive and comprehensive advice, particularly when they involve a point of potentially significant financial value by a (commercial) former client;
- i) Where a former client asks a list of questions of the solicitor/professional and the professional adopts the numbering of the questions and only responds to the specific questions asked, that is likely on an objective construction of the exchanges, to indicate an assumption of responsibility no wider than addressing only the questions posed;
- j) The fact that the former client may state the purpose of seeking answers to question(s) is to inform an approach on a given issue to a third party does not lead to a broader construction of the scope of the assumption of responsibility unless the solicitor/professional is aware of the detailed strategy behind the approach. It is not for the solicitor/professional to second-guess how or why their answers to any questions posed may assist the former client when they choose to approach a third party in due course;
- k) In the event that there is a place for the imposition of a duty to advise on "reasonably incidental" matters in a non-contractual context, i.e. in circumstances of assumption of responsibility by the solicitor/professional, the extent of the burden involved in researching and giving such advice and the level of fees charged, may be relevant factors in assessing whether the scope of the assumption of responsibility extends further than the specific questions upon which the solicitor/professional has been asked to advise;
- l) The subjective understanding of the solicitor/professional and the former client on the scope of the requests being made is not definitive. What matters is an objective assessment of the scope of the responsibility assumed; and
- m) It will be reasonably foreseeable that the former client will rely upon answers given to the questions posed. It will not likely be reasonably foreseeable that the answers provided by a solicitor/professional amount to provision of comprehensive advice on matters unrelated to the questions posed unless it can be demonstrated that: (i) the advice was reasonably incidental or (ii) the response by the solicitor/professional indicates that the answers amount to comprehensive advice.

CONCLUSION

What emerges from the judgment is that when answering informal queries/questions posed by a former client, solicitors/professionals need to take care to identify the limits of any assumption of responsibility to avoid the risk of litigation. This might be achieved, for example, by making it clear and express in any answer to queries/question posed, that the advice is only intended to address the question posed and nothing further, or that the response is initial thoughts and not comprehensive advice. Similarly, the former client seeking advice on an informal basis also needs to take care to understand the extent to which they can reasonably rely on any response given by a solicitor/professional. If what they are seeking is comprehensive advice, the queries/questions posed should be formulated and asked in such a way, and the language used must indicate, that is what is sought from the professional.

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