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Menzies v Oakwood Solicitors: when is a bill paid?

The recent Supreme Court judgement in the case of Menzies v Oakwood has drawn attention to the question of when a solicitor's bill is considered paid. According to section 70(4) of the Solicitors Act 1974, clients have a maximum of 12 months to challenge a solicitor's bill after it has been paid; attempts to query cannot be made beyond this period. However, there have been inconsistencies in interpretations of when this 12-month period begins.

It may seem obvious that a bill is paid once money is exchanged, but complications arise when a solicitor is already in possession of funds intended for settling the bill prior to its issuance. The Supreme Court has reversed the Court of Appeal's decision and ruled that a client's agreement, or 'settlement of account', is necessary for a deduction by a solicitor to qualify as a 'payment' under section 70 of the Act.

Case background

Mr Menzies sustained serious injuries following a road traffic accident in November 2015 and subsequently instructed Oakwood Solicitors to represent him in a claim for damages. The post-LASPO Conditional Fee Agreement (CFA) agreed permitted Oakwood to retain a portion of the damages awarded to cover basic charges, insurance, disbursements, and a success fee, capped at a maximum of 25% of the compensation received.

The claim was settled for £275,000 in March 2019, after which Oakwood received the agreed damages and paid the majority to Mr Menzies while retaining a portion to cover their agreed costs, along with any shortfall, whilst costs were agreed. Oakwood subsequently negotiated costs with the paying party, reaching an agreement that clarified the shortfall amount. In July 2019, Oakwood issued Mr Menzies a Final Statute Bill, which credited him with the sum received from the paying party and deducted the identified shortfall from the retained damages. Following this, Oakwood returned the remaining balance of over £20,000 to Mr Menzies.

In April 2021, more than 21 months after the final bill was issued, Mr Menzies initiated proceedings against Oakwood, seeking an assessment of the Final Statute Bill. Oakwood contended the claim was time-barred, and during a preliminary hearing, it was ruled that Mr Menzies was too late to apply for a detailed assessment and that payment had occurred in July 2019 when the deduction was made from the funds retained by Oakwood.

However, an appeal was granted in the High Court in December 2022, concluding that the retention of funds did not constitute a payment, as there was no adequate settlement of account. It was noted that Oakwood had not informed Mr Menzies of his right to contest the deduction within a reasonable timeframe, which would otherwise be deemed accepted; in essence, payment had not been made, and the 12-month limitation under the Act had not started.

In July 2023, the case was brought before the Court of Appeal, which ruled that Oakwood's bill was considered paid upon delivering a compliant bill to Mr Menzies. The CFA specifically allowed Oakwood to recover its fees from the amounts retained, meaning payment occurred when the deduction was made after the bill was delivered. Consequently, the Court of Appeal upheld the original decision, confirming that Mr Menzies was out of time to challenge the bill.

Finally, the case was presented to the Supreme Court in July 2024, where the Court ruled in favour of Mr Menzies and reinstated the decision made by the High Court. The Supreme Court determined that client agreement is necessary for a payment to be considered valid, and clients must be allowed to review and question the bill before any payment is made.

Legal background

The Solicitors Act 1974 stipulates that clients have the right to challenge their solicitor's fees within one month of the delivery of the bill. Notably, no legal action can be initiated regarding the bill until the assessment has been completed. After the initial month, clients have up to 12 months from the bill's delivery to apply to the court for an assessment, which the court may grant under specific terms. Beyond 12 months, an assessment can only occur in 'special circumstances'.

The assessment process differs if a bill has already been paid; if a client seeks an assessment after the initial month but before the end of the 12-month period, the court will not order an assessment unless special circumstances exist. Once 12 months have passed since payment, no assessment can be made.

The central issue in Menzies v Oakwood was whether the retention of damages by Oakwood constituted a valid payment, which would directly impact the client's rights to contest the fees. Menzies contended that the client must be informed and agree to the specific amount being paid as per the bill. In contrast, Oakwood's position is that an agreement allowing fees to be deducted from funds held on behalf of the client, along with the delivery of a bill detailing those fees, is enough without requiring further agreement.

Supreme Court judgement

Central to the Court's consideration of the respective arguments was the meaning of 'payment' under the Solicitors Act 1974. It is not a technical term, and its meaning depends on its context, but the most straightforward example of payment of a solicitor's bill occurs when a client pays by transferring money to the solicitor. This transfer signifies the client's acceptance and agreement to the charges outlined, perhaps after any challenges had been discussed and agreed. Payment can also be made through an authorised deduction from funds held, but this requires prior agreement on the amount outstanding to ensure a consistent understanding of what constitutes payment.

According to Oakwood's interpretation, payment for the purposes of section 70 can coincide with the delivery of the bill of costs if a retainer agreement exists and the client has agreed for deductions to be made from account. However, this allows payment before the client has a chance to review or seek advice on the bill. This seems contrary to the legislation's intended purpose, and payment by delivery of a bill of costs does not align with the accepted definition of what constitutes payment.

Within the statutory context, several factors warranted consideration; firstly, section 70 addresses the appropriate amount to be charged, with consideration given to whether the costs are reasonable. It would be unexpected for payment to occur without the client having the chance to evaluate the bill. Secondly, presenting a compliant bill is crucial to the statutory framework, emphasising the importance of allowing clients to review and agree to the details. Thirdly, section 70 anticipates that payment will occur after the bill has been delivered, not simply when it is delivered.

The statutory scheme aims to protect clients' interests, which would be compromised if payments were made before the opportunity to assess the bill and decide on payment amounts. Section 70(4) establishes a stricter regime for paid bills, presuming that payment signifies the client's acceptance of the charges. However, under Oakwood's interpretation, this would allow payment to happen without any opportunity for the client to review or agree to the bill.

For these reasons, the legislation's ordinary meaning, context, and purpose support Menzies's position. The ruling was supported by a long-established understanding of what payment by deduction or retention requires, with historical cases consistently stating the need for a settlement of account and agreement to the sum taken or to be taken concerning the bill of costs.

Future implications

This ruling impacts the statutory time limits and clients' rights when challenging solicitors' charges and deems general agreements allowing deductions insufficient. The Act stipulates payments can only be considered valid once a compliant bill has been issued and agreed upon, providing clients with the opportunity to pursue a Solicitor Act Assessment outside of what many consider to be limitation. This may expose firms to further claims, with potentially more old clients having the right to assessment, but there is no guarantee of their success.

In the absence of agreement, any payment made will not be recognised under the Act, allowing the client to retain the right to seek an assessment of fees if special circumstances can be demonstrated. However, if a payment is made, this right is lost after 12 months from the bill's delivery, making the distinction significant.

Existing retainers and billing processes should be reviewed to ensure compliance with the Supreme Court's ruling and any potential deductions outlined when discussing future settlement offers, as fully informed clients are less likely to contest deductions later or to be able to demonstrate special circumstances.

It remains to be seen whether this decision will lead to increased challenges, including solicitor-own-client challenges, but there are ongoing discussions around whether the Solicitors Act 1974 is still fit for purpose, with growing calls for reform. The Civil Justice Council is set to report on the Act, but the review's scope is limited, and there are no indications of significant reforms. Therefore, addressing the issues raised by the Supreme Court remains a priority.