



# E-Signing Contracts during Lockdown

Will Occleston, Solicitor, Commercial Services

# Introduction

- Context - COVID 19, economic uncertainty, social distancing
- Our focus - simple commercial contracts
- Common queries: what are e-signatures? Are they a valid? Are there any pitfalls to be aware of?
- Each transaction should be approached on its own facts

# Structure

1. What is an e-signature? Methods of e-signing
2. Why is e-signing generally regarded as valid way of executing simple commercial contracts?
3. Advantages and disadvantages
4. Due diligence questions
5. Common pitfalls
6. Questions and answers (including questions on notices)

# What is an e-signature?

- Signed by email
- Typed
- Image based e-signatures
- Touch screen
- Biometric



# Are e-signatures allowed for simple contracts?

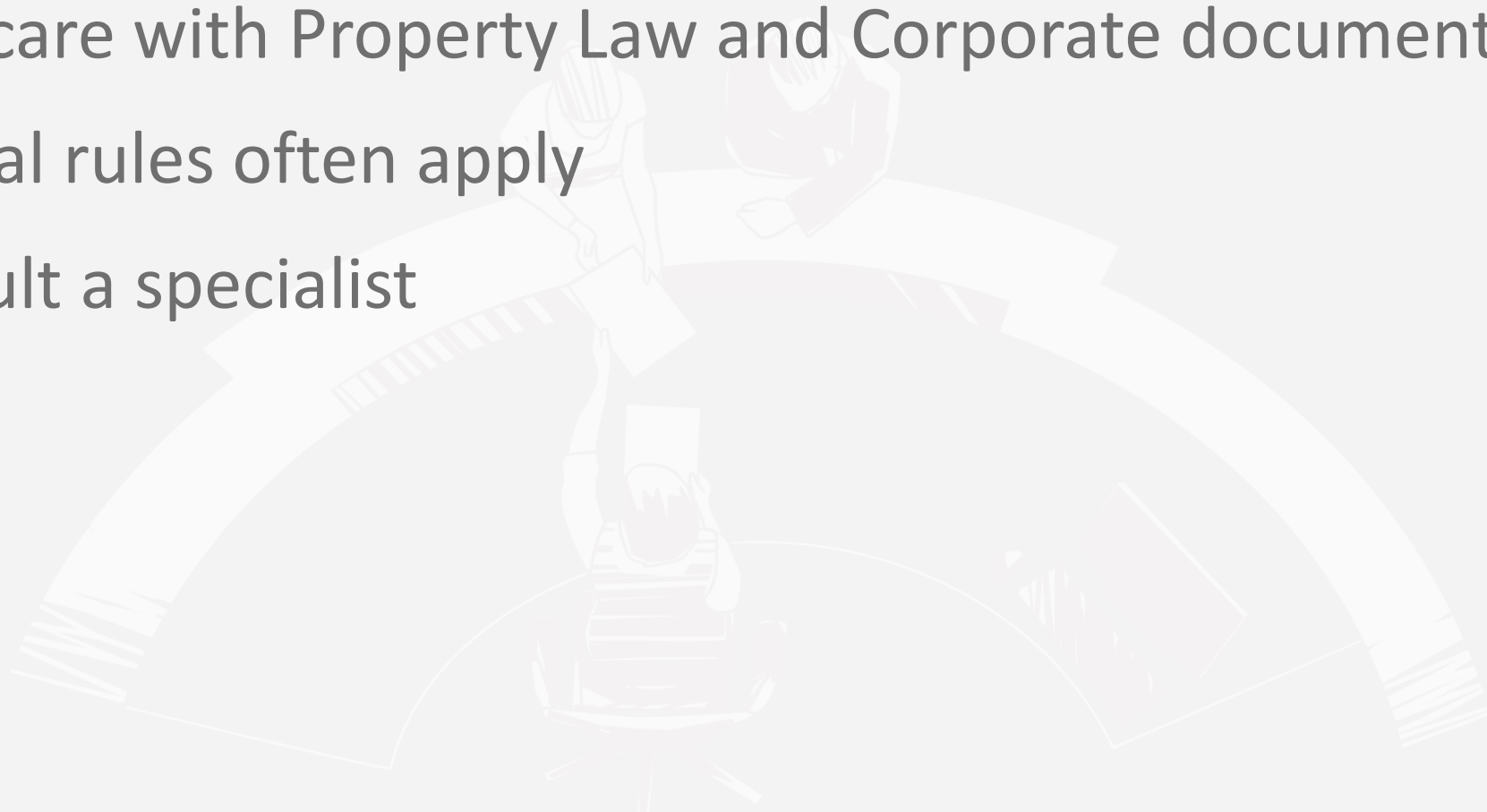
- Contracts do not have to be in any particular form
- Offer, acceptance, consideration, certainty, intention to be bound
- Legislative framework: ambiguous
- Common law: (general view) commercial contracts can be executed using e-signatures
- No definitive statement from a Higher Court. No Primary Legislation.

# Are e-signatures allowed for deeds?

- Deeds - contracts signed with additional formalities
- Accepted view: in simple commercial transactions a deed may be executed using an e-signature
- Seek specialist advice in Property Law transactions
- Witnesses should be physically present
- Position may change

# Exceptions

- Take care with Property Law and Corporate documents
- Special rules often apply
- Consult a specialist



# Evidential weight

- Validity of e-signatures determined in same way as hand-signed documents.
- Opponent must prove on a balance of probabilities that the e-signature is not authentic.
- Meta data may provide additional evidence as to the validity of the e-signature



# Benefits

- Speed of doing business
  - Contracts can be signed remotely
  - Negotiations can be accelerated
  - Often appropriate for low/medium value transactions with a high turnover rates
- Lower transaction costs
  - Paper, copying, packaging, administration, storage, shipping, labour

# Costs

- Can be expensive
- You do not own the software
- Recurring cost
- Less appropriate in high value transactions which are extensively negotiated

# Due diligence on e-signing platforms

- Accessibility
- Security
- Required download speeds
- Transferability between providers
- Supported file types
- Number of permitted users
- Reminders and notifications

# Pitfalls to avoid

- Contracts that need to be filed with an authority
- Foreign jurisdiction clause English law contracts
- Foreign governing law contracts

# Conclusion

- Can be a practical tool for executing simple commercial contracts in a timely manner
- Often a high, recurring cost attached to using them
- Stay up to date - the law could change.



# Giving Notice under a Contract

Joel Murphie, Associate, Commercial Services

# Introduction

- When might notice be given under a contract?
- Requirements for giving notice
- Lack of express notice provisions
- Why does it matter how notice is given?
- Practical points in the current climate

# When might notice be relevant?

- Contracts often require a party to give the other party notice in specific circumstances:
  - Termination
  - Breach of contract
  - Force Majeure
- Can be relevant to litigation or other dispute proceedings, or in relation to property matters, but there are specific requirements in these circumstances

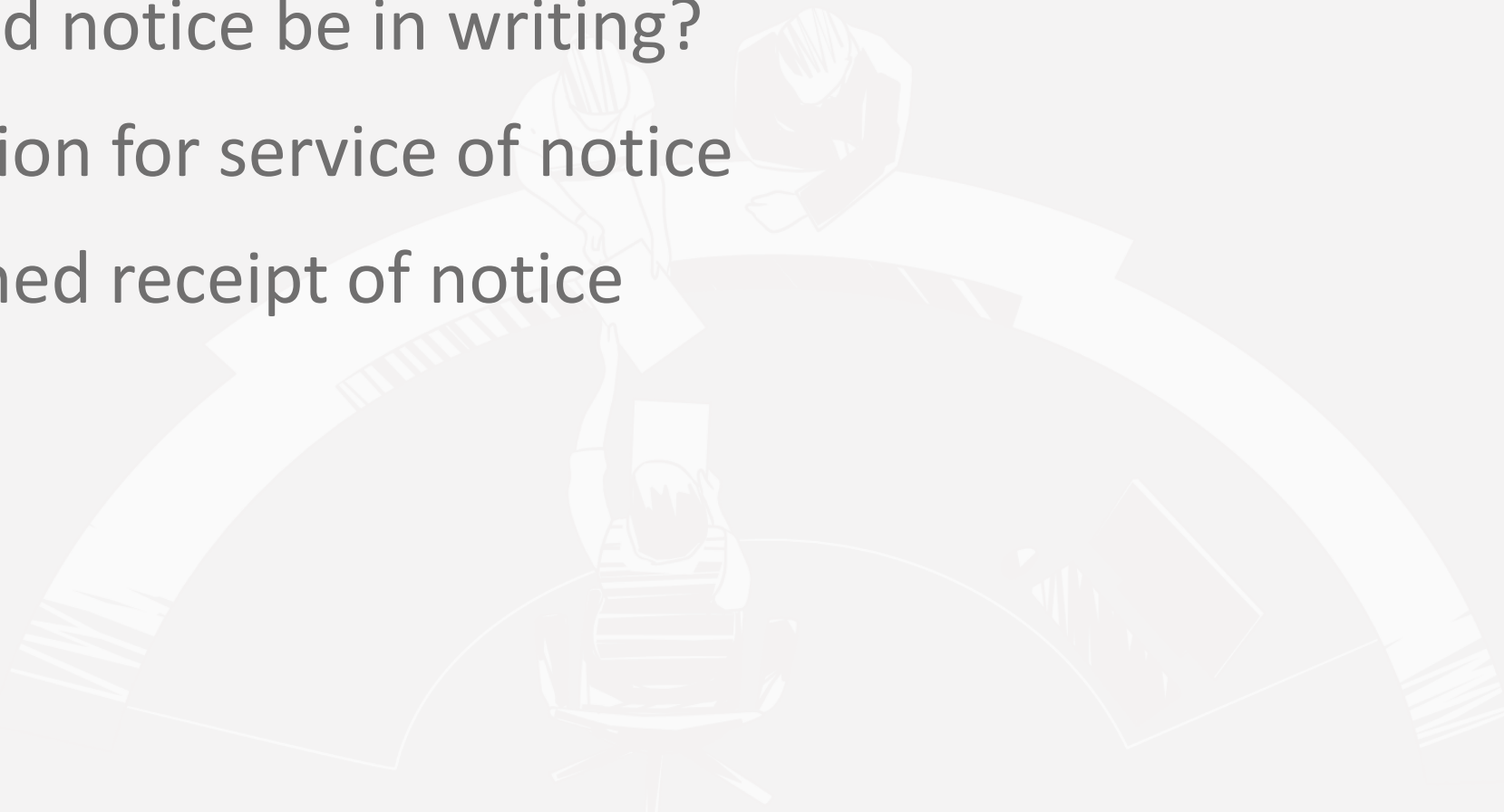


# Requirements for giving notice

- What does the contract say?
  - Circumstances which require notice to be given
  - Time limits
  - “in writing”
- Ensuring notice is deemed to have been received

# No express notice clause

- Should notice be in writing?
- Location for service of notice
- Deemed receipt of notice



# Why does it matter?

- Consequences of not following the set notice procedure
  - Basic rule is that any requirements for service of notices must be strictly complied with
  - When can a defective notice be “saved”?
    - Minor defects if the reasonable recipient, with knowledge of the factual and contextual background, would not be confused by the error
    - Not relevant to requirements of when and where notice is served

# Practical points to consider

- Check the requirements for serving notice before sending anything
- If the notice clause provides alternate methods of service, consider which will be most reliable at present e.g. email
- Consider whether any variations to your notice clause are necessary
- A good notice clause should clearly set out the means by which notice can be served, when notice is deemed received and any time limits that might apply

# Any questions



# Contact details



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