

Ch 10: Documentary and real evidence

Proof of due execution

Proof of handwriting

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Documents in electronic form often carry electronic signatures. According to the Law Commission, in a report to the government with which the government agreed, an electronic signature is legally valid if, “... (i) the person signing the document intends to authenticate [it] and (ii) any formalities relating to [its execution] are satisfied” (see *Electronic execution of documents* (Law Com No 386), 3rd September 2019, accessible at <https://www.lawcom.gov.uk/project/electronic-execution-of-documents/>; See also, Miller, *Electronic signatures valid*, [2019] NLJ 6 Sept, 5).

Such signatures are not limited to electronic facsimiles of an original handwritten signature: *Neocleous v Rees* [2019] All ER (D) 25 (Ch). As the Commission noted in its report, the courts have been prepared to accept electronic signatures in a variety of forms, including an ‘X’ character, initials, a name which is printed, a signatory’s unambiguous self-description, for example, ‘Your loving mother’, a name typed at the bottom of an email and even clicking an ‘I accept’ box. To this list can be added a ‘footer’ in an email where its nature and the circumstances show the ‘authenticating intent’ required to validate it as a signature: *Neocleous v Rees* [2019] All ER (D) 25 (Ch), where the footer was in conventional signature style, the expression ‘Many thanks’ appeared just above the footer and the sender was aware of the footer and its import.

Tape recordings, films, and photographs

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To the extent that the authorities mentioned state that the rule against hearsay does not apply to sketches and photofits for the purposes of criminal proceedings, they have been overtaken by the hearsay provisions of Criminal Justice Act 2003, which expressly include sketches and photofits in the definition of hearsay: see ss 114(1) and 115(2). See also *R v Thomasson* [2021] EWCA Crim 114 at [40] – [48].