
These notes seek to offer a greater understanding of a Costs Lawyer's rights to execute legal documents.

Where does the right to execute certain legal documents come from?

Costs Lawyers can carry out certain Reserved Legal Activities (RLAs) if they are authorised to do so under the Legal Services Act 2007 (the Act) or are exempt. Costs Lawyers who hold a current practising certificate issued by the Costs Lawyer Standards Board (CLSB) are permitted under Schedule 4 Part 1 of the Act to carry out the following RLAs:

- the exercise of a right of audience;
- the conduct of litigation;
- the administration of oaths

Under Schedule 2 of the Act, the administration of oaths means the exercise of the powers conferred on a commissioner for oaths by

- the Commissioners for Oaths Act 1889;
- the Commissioners for Oaths Act 1891;
- section 24 of the Stamp Duties Management Act 1891.

Under the Costs Lawyers Statement of Rights approved by the Lord Chancellor in July 2007, the right was clarified as being “the right to administer oaths and take affidavits under section 113 of the Courts and Legal Services Act 1990”. This provision was repealed on 1 January 2010 and is now section 183 of the Act. The Costs Lawyer Statement of Rights was revised on 26 March 2014. It now simply reads: “Further, you may administer any oath.”

Do RLAs include the execution of documents?

Schedule 2 of the Act provides further details about what RLAs are. This guidance note focuses specifically on the RLAs under which Costs Lawyers are most likely to execute legal documents – the conduct of litigation and the administration of oaths.

What documents can a Costs Lawyer execute?

The conduct of litigation

Costs Lawyers can execute any legal documents connected with the conduct of costs litigation. This includes issuing proceedings and performing ancillary functions relating to those costs proceedings.

The administration of oaths

Costs Lawyers are regarded as commissioners of oaths under section 183 of the Act as they are “relevant authorised persons”. In practice, Costs Lawyers are also able to take affidavits.

What are oaths and affidavits?

The Commissioners for Oaths Act 1889 sets out the following definitions for oaths and affidavits:

- Oath includes affirmation and declaration.
- Affidavit includes affirmation, statutory or other declaration, acknowledgement, examination, and attestation or protestation of honour.

The Commissioners for Oaths Act 1889 (section 1) states that as long as the individual does not have a personal interest in the proceedings, commissioners of oaths may “in England or elsewhere administer any oath or take any affidavit for the purposes of any court or matter in England and take any bail or recognisance in or for the purpose of any civil proceeding in the Senior Courts”.

What processes and procedures must I follow if I administer an oath as a Costs Lawyer?

The rules surrounding the correct processes and procedures are set out in section 183 of the Act. You should not administer an oath in any proceedings in which you, your

partner, fellow director or your employer represent one of the parties or have an interest.

You are first required to:

- Ascertain if the person before you wishes to swear on oath or affirm; and
- explain the affirmation or oath.

You are under a duty to ascertain that:

- the person before you is in fact the deponent;
- the deponent is competent to make the affidavit, affirmation or declaration;
- the deponent is fully aware that the document they are about to swear or declare is the truth; and
- the exhibits, if any, are the documents referred to in the deposition.

The process to follow is that you:

- must state in the jurat or attestation the place and date on which the oath or affidavit is taken or made;
- must insert your signature below the jurat (if your signature is unclear you should write your full name in block capitals);
- should, underneath your name, record your status as “Commissioner for Oaths”;
- must ensure that any amendments to the affidavit is initialled by you in the margin alongside the amendment; and
- must ensure that any exhibits to the affidavit are signed by you.

What documents can I not execute?

Costs Lawyers are not automatically authorised to carry out the following RLAs which may involve the execution of documents. However, there are exceptions in some circumstances – if you think these may apply, see section 19 and Schedule 3 of the Act for further details.

Reserved instrument activities

These include:

- preparing any instrument of transfer or charge for the purposes of the Land Registration Act 2003;
- making an application or lodging a document for registration under that Act;
- preparing any instrument relating to real or personal estate for the purposes of the law of England and Wales, or an instrument relating to court proceedings in England and Wales; or
- preparing a contract for the sale or other disposition of land (except a contract to grant a short lease).

These do not normally include preparing:

- an instrument relating to any particular court proceedings (unless a restriction has been placed on the individual);
- a will or other testamentary instrument;
- an agreement not intended to be executed as a deed;
- a letter or power of attorney; or
- a transfer of stock containing no trust or limitation on the transfer.

Exemptions:

An individual is exempt if they carry on the reserved instrument activity:

- in the course of his duty as a public officer;
- under the supervision of an authorised person, and they are connected through their employment;
- if the individual is accredited or authorised;
- if the instrument creates a farm business tenancy or relates to an existing tenancy.

Probate activities

These include:

Preparing any probate papers (including a grant of probate or a grant of letters of administration) for the purposes of the law of England or Wales, or in relation to any proceedings in England or Wales.

Exemptions:

An individual is exempt if they carry on the probate activity under the supervision of an authorised person, and they are connected through their employment, or do not receive, or expect to receive any fee, gain or reward for doing so.

Can a trainee Costs Lawyer exercise these rights?

No, only a qualified Costs Lawyer holding a current practising certificate may exercise these rights.

Important note

Under section 14 of the Act, it is an offence to carry on a RLA unless the person is entitled to do so.

END