
Definitions

CLSB	The Costs Lawyer Standards Board
Costs Lawyer	A Costs Lawyer authorised and regulated by the CLSB under the LSA
LSA	Legal Services Act 2007

References to legislative provisions are references to the LSA, except where otherwise stated.

Authorised rights

1. This guidance clarifies the rights of an authorised Costs Lawyer to carry out reserved legal activities. These rights are sometimes referred to as “authorised rights” or “reserved legal activity rights”.

What are the authorised rights of a Costs Lawyer?

2. A Costs Lawyer is entitled, by virtue of their authorisation as a Costs Lawyer under the LSA, to carry out three reserved legal activities (Schedule 4, Part 1):
 - the exercise of a right of audience;
 - the conduct of litigation; and
 - the administration of oaths.
3. A statement clarifying these rights in relation to Costs Lawyers was adopted by the Lord Chancellor in July 2007 and a revised version was approved by the Legal Services Board in March 2014. The statement is referred to in the Costs Lawyer Code of Conduct and reads as follows.

Provided that you are instructed to deal only with matters that relate to costs, you may conduct proceedings and represent clients in any court or tribunal, including any criminal court or courts martial, the Supreme Court or the Privy Council where:

- *the proceedings are at first instance; or*

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- *the proceedings include an appeal below the level of the Court of Appeal or Upper Tribunal, are on a first appeal (other than in the Court of Appeal) and the appeal itself relates to costs; or*
 - *the proceedings do not fall within either of the categories above, but your instructions are limited to dealing with the costs of the proceedings; or*
 - *the court or tribunal grants permission for you to conduct proceedings or to represent a client (or both).*

Where proceedings relate to other matters, in addition to costs, the rights referred to above apply only to those parts of the proceedings (if any) that:

- *relate solely to costs; or*
- *when they relate to other issues, solely those issues that are not in dispute.*

A matter 'relates to costs' if it relates to payments for legal representation, including payments in respect of pro bono representation under s194 of the LSA and/or to payments made for bringing or defending any proceedings, but only if and to the extent that those monies are not damages.

For the avoidance of doubt, this includes:

- *Costs between opposing parties including costs management and budgeting.*
- *Solicitor and client costs but not if and to the extent that issues of negligence arise when a Lawyer competent to deal with allegations of negligence ought to be instructed instead.*
- *Legal aid, criminal costs, wasted costs or costs against third parties.*

Further, you may administer any oath.

Where do authorised rights derive from?

4. An individual Costs Lawyer's right to carry out reserved legal activities derives from the LSA. Any question of entitlement is determined solely in accordance with that legislation (section 13(1)).
5. Under the LSA, a person is entitled to carry on a reserved legal activity where that person is authorised in relation to the activity in question (section 13(2)(a)). A person will be authorised if they are authorised by an approved regulator (section 18(1)). In relation to Costs Lawyers, the approved regulator is the CLSB.

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6. An authorised person may be an individual or a non-natural person. The definition of a person includes a body of persons (corporate or incorporate), commonly referred to as an entity in the context of legal services regulation (section 207).
 7. The CLSB does not authorise or regulate entities, only individuals. Certain other approved regulators, such as the Solicitors Regulation Authority, authorise and regulate entities.

Is authorisation always required in order to carry out a reserved legal activity?

8. No. If a person is not authorised, they may still be entitled to carry out a reserved legal activity if they are an “exempt person” in relation to the activity in question (section 13(2)(b)).
9. A list of exempt persons can be found in Schedule 3 to the LSA. Each reserved legal activity has its own distinct list of exemptions.

Regulated persons

Duties of a regulated person

10. If a person is authorised by an approved regulator under the LSA, then they are subject to that approved regulator’s rules. Authorised Costs Lawyers are regulated by the CLSB and are “regulated persons” for the purposes of the LSA.
11. A regulated person has a duty to comply with all “regulatory arrangements” made by their approved regulator (section 176). Costs Lawyers must therefore comply with the provisions of the Costs Lawyer Handbook – including the Code of Conduct – and any other rules or procedures implemented by the CLSB that make up its regulatory arrangements.

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12. An individual who is not authorised by the CLSB, but who is a manager or employee of an authorised person, is also considered a regulated person under the LSA and must comply with all relevant regulatory arrangements (section 176(2)(b)).
 13. Regulated persons who are authorised to exercise a right of audience or conduct litigation have additional duties under the LSA. These include a duty to the court to act with independence in the interests of justice (section 188).

Offences under the LSA

14. It is an offence for a person to carry on a reserved legal activity unless they are entitled to do so under the LSA; that is, unless they are either authorised or exempt (section 14). The offence is punishable by imprisonment and/or a fine.
15. It is also an offence for a person to (section 17):
 - wilfully pretend to be entitled to carry on a reserved legal activity;
 - use a name, title or description with the intention of implying falsely that the person is entitled to carry on a reserved legal activity.

The reserved legal activities

What is a right of audience?

16. A “right of audience” means a right to appear before and address a court, including the right to call and examine witnesses (Schedule 2, paragraph 3).

Can a Costs Lawyer delegate their right of audience?

17. No. The CLSB authorises and regulates individual Costs Lawyers, and it is the Costs Lawyer who is authorised in relation to this reserved legal activity (section 18). The LSA makes no provision for the delegation of this right by an authorised person to an unauthorised person.

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18. While a Costs Lawyer’s right of audience cannot be delegated, an unauthorised person may be entitled to exercise a right of audience – including in relation to costs – if they are an exempt person under the LSA (see paragraph 8 above).
 19. In relation to exercising a right of audience, a person will be exempt if, for example, the court grants them a right of audience in the proceedings at hand or if they have a right of audience under a law other than the LSA. A person will also be exempt if their work generally includes assisting in the conduct of litigation, and they are assisting in the conduct of the proceedings at hand under the instruction and supervision of an authorised Costs Lawyer, where the proceedings are heard in chambers¹ in the High Court or County Court (and are not reserved family proceedings) (Schedule 3, paragraph 1(7)).
 20. Therefore, a Costs Lawyer may instruct a colleague who is not an authorised person to attend a court hearing under the Costs Lawyer’s supervision. However, the Costs Lawyer should be mindful that their colleague will only be able to exercise a right of audience if they meet the criteria for being an exempt person under the LSA. In such circumstances, the Costs Lawyer is not delegating their authorised rights, nor are they delegating responsibility for the exercise of those rights; rather, they are delegating a task (under supervision) that forms part of the overall service to their client.
 21. A Costs Lawyer who chooses to delegate a task to a colleague remains responsible for regulatory compliance and for client outcomes. The Costs Lawyer must therefore retain proper oversight of the matter and supervise their colleague appropriately. This includes ensuring that:
 - delegated tasks are carried out in accordance with the CLSB’s regulatory arrangements;

¹ In MAZUR & ANOR vs CHARLES RUSSELL SPEECHLYS LLP, the Court of Appeal offered clarity on ‘in chambers; at paragraph 57 of its ruling. “The expression “in chambers” is an out-of-date reference to hearings held in the High Court or county court which were not held in public and were often procedural in nature. They were in the judge’s room, the judge often being a Master (in the High Court) or District Judge (in the county court or District Registry).”

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- the client understands in advance that the task will be delegated to a person who is not an authorised Costs Lawyer;
 - the delegation complies with the Costs Lawyer Code of Conduct, in particular that delegating the task is in the client’s best interests; and
 - the Costs Lawyer’s insurance policy extends to cover the outcome of any delegated tasks.

What is the conduct of litigation?

22. The “conduct of litigation” means (Schedule 2, paragraph 4):

- the issuing of proceedings before any court in England and Wales;
- the commencement, prosecution and defence of such proceedings; and
- the performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions).

23. In *MAZUR & ANOR vs CHARLES RUSSELL SPEECHLYS LLP* the Court of Appeal did not provide a definitive description of what is conducting litigation. However, it identified seven activities which it considered could be regarded as “*unlikely to fall within the statutory definition of the “conduct of litigation”*” as follows:

- I. *Pre-litigation work.*
- II. *Giving legal advice in connection with court proceedings.*
- III. *Conducting correspondence with the opposing party on behalf of clients.*
- IV. *Gathering evidence.*
- V. *Instructing and liaising with experts and counsel.*
- VI. *Signing a statement of truth in respect of a statement of case.*
- VII. *Signing any other document that the CPR permits to be signed by a legal representative, as defined by CPR Part 2.3.”*

24. In the same way that a Costs Lawyer cannot delegate their right of audience to an unauthorised person, a Costs Lawyer cannot delegate their **right** to conduct litigation. Neither can a litigant in person delegate their **right** to conduct litigation.

25. A Costs Lawyer may delegate tasks which fall within the scope of the “conduct of litigation” to an unauthorised individual only if the following conditions are met:

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- a) The unauthorised person is in truth acting on behalf of the Costs Lawyer and it is, on inspection of the facts, the Costs Lawyer who conducting litigation.
 - b) The Costs Lawyer gives the unauthorised person proper direction, and exercises supervision and control.
 - c) The Costs Lawyer documents appropriate management processes to ensure compliance. As the “conduct of litigation” is defined by law and not regulation, the Costs Lawyer must ensure that their management processes comply with the latest legal position.
26. If the reality is that the litigation is not being conducted by the unauthorised person for and on behalf of the Costs Lawyer or another authorised individual, then the unauthorised person will be committing an offence under the LSA. The Costs Lawyer who delegated the work will also be breaching the CLSB’s Practising Rules and Principles 3 and 4 of the Code of Conduct.
27. A person to whom the Costs Lawyer delegates reserved legal activity work under supervision must not further delegate that work. Only the Costs Lawyer may delegate ancillary reserved legal activity work and that right is not transferable to an unauthorised person. The Costs Lawyer must not only remain responsible for the reserved legal activity work but must also be able to demonstrate supervision.
28. Exempt persons may conduct litigation, but the categories of exempt persons in relation to the conduct of litigation are relatively narrow (Schedule 3, paragraph 2). Essentially, an unauthorised person may conduct litigation where they:
- have the court’s permission;
 - have a right to conduct litigation under a law other than the LSA;
 - are a party to the litigation (i.e. a litigant-in-person).

What is the administration of oaths?

29. The “administration of oaths” means an exercise of the powers conferred on a commissioner for oaths by various legislation, including the Commissioners for Oaths Acts 1889 and 1891 (Schedule 2, paragraph 8).

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30. A Costs Lawyer cannot delegate their right to administer oaths, in the same way that they cannot delegate their other authorised rights. Exempt persons may administer oaths; exemptions exist for persons who (Schedule 3, paragraph 6):
- have a right to administer oaths under a law other than the LSA;
 - have a commission under the Commissioners for Oaths Act 1889.

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