CILEx Regulation
Interim Guidance
The conduct of litigation and supervision

Purpose

1. CILEx Regulation understands the distress and uncertainty the recent Judgment in Mazur v Charles Russell Speechlys LLP [2025] EWHC 2341 (KB) (Mazur Judgment) has caused primarily Chartered Legal Executives, but also CILEX members, in providing litigation services subject to the supervision of a practitioner authorised in the conduct of litigation.

2. This interim guidance is prepared for Chartered Legal Executives, CILEX Practitioners, CRL regulated entities and CILEX members. It sets out CILEx Regulation's view of the effect of the statutory restrictions on providing litigation services and may be updated to take account of further court judgments and guidance published by other legal regulators.

Reserved Legal Activities

3. As summarised in the Mazur Judgement (para 51) the Legal Services Act 2007 makes it clear that all individuals engaged in reserved activities and all firms providing reserved legal activities to the public must be: either

   (i) authorised by an approved regulator in relation to that reserved activity; or
   (ii) fall within a relevant exemption.

4. Engaging in reserved activities when you are not authorised or exempt is a criminal offence. One of the "reserved legal activities" in the Legal Services Act 2007 is the "conduct of litigation".

5. You must also ensure that you comply with paragraph 5.6 of the CILEx Code of Conduct which states that you must not act in a matter where you do not have the right or are not authorised to act.

What is the conduct of litigation?

6. The "conduct of litigation" is defined in the Legal Services Act 2007 as:

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

7. For these purposes "court" includes the First-tier Tribunal, Upper Tribunal, Employment Tribunals and some other Tribunals (see also paragraphs 24-25 below).

8. There are some important but limited exemptions set out below which permit non-authorised persons to represent a party to tribunal proceedings.

9. The courts have tended to interpret the conduct of litigation narrowly focusing particularly on formal steps taken in the proceedings. However, there is still uncertainty about what is included in more general words "the commencement, prosecution and defence of such proceedings" which were added to the definition after some of the cases had been decided.

10. Whether activity amounts to the "conduct of litigation" is a question of fact and degree in each case depending on the role of and activity undertaken by the individual in question. It is the substance of the activity that matters and not its form.

11. The test is to look at the entirety of the activities undertaken for a client. The activities taken together may amount, in substance, to the prosecution or defence of proceedings even if individual actions when considered in isolation would not. The closer the match overall to the activity of an authorised person conducting litigation, the more likely that litigation is being conducted.

12. The following are unlikely on their own to fall within the definition of the "conduct of litigation":

- Investigating potential claims
- Drafting and sending pre-action correspondence
- Giving legal advice in relation to disputes (for example on the merits of issuing proceedings) or the procedure that needs to be followed, or
- Purely mechanical steps such as process serving or the administrative process of issuing or serving a claim.

13. Advice in the form of draft court documents such as particulars of claim which are subsequently filed and served may amount to conducting litigation even if the adviser does not formally sign the pleading and the client deals with any associated administrative process.

14. There is a distinction between:

- the assumption of legal responsibility for a step (for example the service of documents on another party as required by the Civil Procedure Rules), which amounts to the conduct of litigation, and
- the performance of an administrative or mechanical function in connection with that step (such as physically delivering a document), which does not amount to the conduct of litigation.

15. Do not use an informal or artificial arrangement to try to get round the requirement to have litigation conducted by an authorised person.

<u>What are the exemptions?</u>

16. The following exemptions apply to the conduct of litigation:

(i) The court has granted a right for the person to conduct litigation in relation to the relevant proceedings
(ii) There is a statutory right for the person to conduct litigation in relation to the proceedings in question,
(iii) The person is a party to the proceedings acting as litigant in person.

17. Examples of statutory rights to conduct litigation are:

- Rights granted under Tribunal rules for non-authorised persons to represent a party to tribunal proceedings.[1]
- The right under section 223 of the Local Government Act 1972 for an appropriately authorised officer of a local authority to prosecute or defend proceedings before a magistrates' court on the local authority's behalf.

Assisting an authorised person to conduct litigation

18. There is no exemption enabling non-authorised individuals to conduct litigation on the basis of doing so under the general supervision of an authorised individual or entity.

19. An individual who is not authorised is not able to conduct litigation simply because they do so in the name of their firm.

What does this mean for me in practice?

20. CILEX members who are not authorised to conduct litigation will frequently assist in the conduct of litigation by an authorised individual[2]. This is permitted under the Legal Services Act 2007.

21. Any individual who is not authorised to conduct litigation should ensure that:

(i) the formal conduct of the litigation is the responsibility of an authorised individual and this is properly documented,
(ii) any formal steps in the litigation are taken by an authorised individual (e.g. signing a claim form), and
(iii) the responsibility for decisions and documents clearly remains with the authorised individual.

22. This does not mean that an employee or member of a firm must restrict their activity to mechanical or administrative tasks. There will be many day to day actions which may be delegated by the authorised person responsible for conducting the litigation.

23. Who takes responsibility for formal and important steps and decisions is likely to be the best indicator of which individual is actually conducting the litigation. The individual conducting a piece of litigation is likely to be the lawyer with the actual responsibility for it within the firm and whose name appears as an individual in formal documents as the person with conduct. That individual must be authorised to conduct litigation.

24. CILEX members can rely on applicable tribunal rules, many of which permit a party to appoint a representative who is not an authorised person under the Legal Services Act. If so, authorisation to conduct litigation is not required.

25. In relation to claims in the Employment Tribunal and the Employment Appeals Tribunal, sections 6 and 29 respectively of the Employment Tribunals Act 1996, permit parties to appoint representatives who are not authorised persons. Care should be taken to comply with the claims management services regulatory framework administered by

[1] Some work acting for claimants (for example in relation to employment claims) is subject to the claims management services regulatory regime operated by the Financial Conduct Authority. There are exemptions from that regime enabling non-authorised individuals to provide regulated claims management services under the direction and supervision of an exempt lawyer (i.e. an authorised person under the Legal Services Act 2007).
[2] The term support, rather assist, is used in the Mazur Judgment (see eg para 64).

the Financial Conduct Authority. Representing a claimant in an employment related claim is an FCA regulated activity. However, Fellows of CILEX, solicitors and barristers, and those working at their direction and under their supervision, are excluded. Fellows can therefore represent clients in Employment Tribunal claims and supervise others working on such claims regardless of whether they have the right to conduct litigation or rights of audience.

Appearing at hearings

26. Exercising rights of audience before courts is also a reserved activity but the ability of non-authorised individuals to appear in some circumstances is covered by an exemption in the 2007 Act. This enables a person assisting in the conduct of litigation under the instruction and supervision of an authorised individual to appear at a hearing in chambers in the High Court, County Court or Family Court.