



CILEx Regulation

Guidance on the conduct of litigation and supervision

Executive Summary

1. **Delegation and supervision:** The Court of Appeal judgment of March 2026 confirms that unauthorised individuals (including Chartered Legal Executives who do not have litigation practice rights) may perform litigation tasks provided they are supervised by an authorised person (with relevant practice rights) who retains full responsibility for the conduct of that work.
2. **Scope of litigation activity:** The conduct of litigation includes issuing proceedings, managing cases and performing formal procedural steps. Depending on context, some activities (such as pre-litigation work or general advice) are likely to fall outside the scope of the conduct of litigation.
3. **Supervision expectations:** Proportionate, risk-based supervision arrangements must be in place, appropriately evidenced with clear documentation. Authorised individuals must have sufficient expertise and capacity to supervise and provide oversight of delegated work.
4. **Compliance and enforcement:** Failure to comply with this guidance is likely to amount to misconduct breaching the CILEX Code of Conduct and resulting in disciplinary action.

Purpose

5. This guidance is prepared for Chartered Legal Executives, CILEX Practitioners, CRL regulated entities and CILEX members following the [Court of Appeal judgment of March 2026](#). It should be read in conjunction with guidance published by other legal regulators if you are working under their regulatory jurisdiction.
6. The guidance explains:
 - a. the importance of ensuring that the carrying on of the conduct of litigation is only undertaken by those who are authorised to do so
 - b. the nature and types of services unauthorised persons can lawfully perform under supervision
 - c. the requirement for proper management supervision and control.
7. We will be in contact with each CRL firm by mid-June 2026 to ask for details of individuals carrying out the conduct of litigation (as well as other reserved legal activities) and supervision arrangements. We will work with CRL firms to help them

comply with this guidance. We will publish case studies which reflect the way in which practices have demonstrated how they comply with this guidance.

8. The guidance is not exhaustive and does not cover every eventuality. Over the coming months we shall publish additional guidance to mitigate any specific risks we identify.

Introduction

9. [The Court of Appeal Judgment of March 2026](#) considered whether an unauthorised person is entitled to conduct litigation under the supervision of an authorised person.
10. The conduct of litigation is one of six reserved legal activities specified at section 13(2) Legal Services Act 2007 (LSA).
11. Section 13(1) LSA makes it clear that all individuals engaged in reserved legal 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.
12. The Court of Appeal confirmed that an unauthorised person can lawfully perform any tasks which are within the scope of the conduct of litigation for and on behalf of an authorised individual providing the authorised individual retains responsibility for the tasks delegated to the unauthorised person. An 'authorised individual' includes a Chartered Legal Executive who holds the relevant practice rights, a solicitor or suitably authorised barrister. The Court of Appeal stated that:
 - a. an unauthorised person can lawfully perform any tasks, which are within the **scope of the conduct of litigation**, for and on behalf of an authorised individual such as a solicitor or appropriately authorised CILEX member. The authorised individual retains responsibility for the tasks delegated to the unauthorised person. The authorised individual is, therefore, the person **carrying on** the conduct of litigation.
 - b. the delegation of tasks requires proper direction, management supervision and control, appropriate arrangements for which must be put in place by the authorised person
 - c. the degree of appropriate control and supervision will always depend on the particular circumstances.
13. The Court of Appeal also said that "The question in any given set of circumstances is whether the unauthorised person, in carrying out whatever tasks which fall within the scope of 'conduct of litigation' have been delegated to him or her, is in truth acting on behalf of the authorised individual. If they are, it is the authorised individual who is conducting the litigation. But if the reality is that the litigation is not being conducted by the unauthorised person for and on behalf of the authorised individual, they will be committing an offence."

What is the conduct of litigation?

14. The “conduct of litigation” is defined in section 12 and Schedule 2 paragraph 4(1) LSA 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).
15. Issuing proceedings before any court in England and Wales refers to the process of starting court proceedings by issuing an originating document such as a claim form (see, for example, CPR Part 7.2(1)). “The performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions)” is also limited to formal steps. One example is service of documents such as statements of case.
16. For these purposes “court” includes steps taken in proceedings initiated before:
 - the Supreme Court
 - Court of Appeal: Civil and Criminal Division
 - High Court: Kings Bench Division, Chancery Division, Family Division and the Court of Protection
 - Crown court, county court, magistrate’s court.
17. In addition, section 207 LSA defines this to include proceedings before certain tribunals which include:
 - The Upper Tribunal
 - The First-tier tribunal, which includes the tribunals within the:
 - War Pensions and Armed Forces Compensation Chamber
 - Social Entitlement Chamber
 - Health Education and Social Care Chamber
 - General Regulatory Chamber
 - Tax Chamber
 - Immigration and Asylum Chamber
 - Property Chamber
 - A statutory inquiry (within the meaning of the Tribunal and Inquiries Act 1992)
 - Employment Tribunals and some other Tribunals (see also paragraphs 34-35 below).
18. There are some important but limited exemptions set out below which permit non-authorised persons to represent a party to tribunal proceedings.
19. The ordinary meaning of the words “conduct of litigation” refers to the tasks to be undertaken, whilst the words “carry on” refer to direction and control of, and responsibility for, those tasks. The words “carry on” in the context of the “conduct of litigation” do not refer simply to doing acts.
20. The Court of Appeal judgment stated that in assessing any activity the question of fact and degree is not whether an individual task is within the conduct of litigation, “it is

whether a person who has performed a task which is within the conduct of litigation, has assumed responsibility for it rather than undertaking the task as a mechanical action.” In other words, an unauthorised individual can carry out a task or tasks if appropriately delegated to them by an authorised individual who retains responsibility for it.

21. Some tasks are clearly outside the conduct of litigation, for example activities which take place prior to the issue of proceedings, and which do not involve contact with the court, such as drafting a claim form or pre-action correspondence.
22. The Court of Appeal concluded it was not possible to provide a comprehensive list of all the tasks that fall within and outside the conduct of litigation. It highlighted the following areas from a list provided by The Law Society which contended were unlikely to fall within the statutory definition of “conduct of litigation”:
 - 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 2.3¹.
23. Advice in the form of draft court documents prepared after proceedings have been issued (such as a defence) 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.

What are the exemptions?

24. 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.
25. Examples of statutory rights to conduct litigation are:
 - Rights granted under Tribunal rules for non-authorised persons to represent a party to tribunal proceedings.²

¹ ‘legal representative’ means a –

(a) barrister;
(b) solicitor;
(c) solicitor’s employee;
(d) manager of a body recognised under section 9 of the Administration of Justice Act 1985; or
(e) person who, for the purposes of the LSA, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act),
who has been instructed to act for a party in relation to proceedings;

² 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

- 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.
26. Under s.193 LSA the Treasury Solicitor, the solicitor to any other public department, the solicitor to the Church Commissioners and the solicitor to the Duchy of Cornwall (as well as their employees, including Chartered Legal Executives) are exempt persons and entitled to carry out reserved legal activities³.

Supervision Arrangements

27. While the Court of Appeal concluded that only an authorised person may “carry on” the conduct of litigation, these words refer to the direction and control of, and responsibility for, the relevant tasks. The work involved in the litigation can be undertaken by unauthorised staff where it does not amount to the reserved activity of the conduct of litigation. Where this does amount to the conduct of litigation, the unauthorised person may also undertake the work where this has been delegated to them, so long as the authorised individual retains responsibility for the tasks delegated. Responsibility means both formal responsibility for the task itself, and responsibility to meet the professional principles set out in section 1(3) LSA and the requirements of the CILEX Code of Conduct.
28. The Court of Appeal made it clear that the delegation of tasks by the authorised individual to the unauthorised person requires proper direction, management supervision and control. Regulated individuals and firms are accountable for the actions of those they supervise. These individuals should be appropriately qualified and experienced both in the relevant area of law and in supervising the delivery of legal services. What is appropriate supervision and control will depend on the circumstance and be proportionate to the risk.
29. The Court of Appeal stated “In some circumstances the degree of appropriate control and supervision will be high, with approval required before things are done. In other, for example routine, circumstances, a lower level of control and supervision will be required. In such cases, it may be sufficient for the authorised individual to conduct regular meetings with the unauthorised person and to sample their work. In short, provided the authorised individual puts in place appropriate arrangements for supervision of and delegation to unauthorised persons, those persons may perform tasks that amount to the conduct of litigation for and on behalf of the authorised individual”.
30. In determining what a proportionate supervisory arrangement is, firms and supervisors should consider (this is a guide and not an exhaustive list):
- a. The inherent risk presented by the task or litigation. More complex tasks or litigation is likely to require closer supervision, whereas routine tasks are likely to require lighter supervision. The same will apply with work that you categorise as high risk.
 - b. The unauthorised individual's relative experience in the task delegated to them. Less experienced individuals are likely to require closer supervision than more experienced individuals.

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 LSA).

³ See also [CPR r.66.3\(1\)](#) which confirms the ability of officers acting on behalf of the Crown to sign, swear or verify certain documents, and discharge procedural obligations.

- c. The supervisor's capacity. An authorised individual needs to have capacity appropriately to oversee tasks delegated to unauthorised individuals. When assessing capacity, the authorised individual will need to assess regularly the profile of their caseload (both current and prospective) in the context of their own qualifications and experience and that of their team members. This is particularly the case where work is considered high risk and/or complex.
 - d. The supervisor's expertise. The authorised individual will need to be appropriately qualified to establish what is adequate in terms of the supervision arrangements, as well as to oversee the work. The authorised individual should have sufficient experience and competence in the specific area of law they are supervising.
 - e. Appropriate recording. Supervisory arrangements need to be auditable and documented, proportionate to the risk posed.
31. It is important that any supervisory arrangements are sufficient – informal, cursory or artificial arrangements are unlikely to meet the requirement to have litigation conducted by an authorised person. Likewise, an unauthorised individual cannot conduct litigation simply because they do so in the name of their firm.
32. CILEX Members working in SRA regulated firms should also familiarise themselves with the SRA's guidance on effective supervision and their Enforcement Strategy.

What does this mean for me in practice?

33. Any individual who is not authorised to conduct litigation should ensure that the conduct of the litigation is the responsibility of an authorised individual and that this and any supervision arrangements are properly documented.
34. There are exemptions to this. 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 LSA. If so, authorisation to conduct litigation is not required.
35. 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 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

36. Exercising rights of audience before courts is also a reserved activity but the ability of unauthorised individuals to appear in some circumstances is covered by an exemption in the LSA. 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.

Applicable Regulatory Requirements

37. The [CILEX Code of Conduct](#) sets out the principles applicable to Chartered Legal Executives, CILEx practitioners and CRL Firms (including its officers, owners,

managers and employees) in their conduct, practise and professional performance, and the outcomes they must meet, in particular

- a. paragraph 5.6 which states that you must not act in a matter where you do not have the right or are not authorised to act
- b. Principle 8 which states that you must act effectively and in accordance with proper governance and sound financial and risk management principles
- c. where applicable, paragraph 8.2 which states that you must ensure that you properly supervise tasks that you have asked others to perform on your behalf, recognising that you remain accountable for any such work
- d. paragraph 8.6 which states that you must adhere to effective procedures to ensure compliance with your legal and regulatory obligations.

Regulatory Requirements for CRL Firms

- 38. CRL Firms are expected to document and review regularly their processes and controls for the delegation and supervision of reserved legal activities carried out by authorised persons to unauthorised individuals. This is to provide clarity about the extent and limit of delegated authority and to ensure that the authorised person retains responsibility for the tasks delegated to the unauthorised individual.
- 39. These arrangements may be recorded in a range of formats dependent on the organisational structure of the firm and should:
 - a. take account of:
 - i. the nature and risks of the legal tasks delegated to the unauthorised individual, and
 - ii. the respective skills and experience of the authorised person and the unauthorised individual.
 - b. document how regularly work will be reviewed and evidenced to ensure:
 - iii. the work is being carried out to an appropriate standard which meets the client's needs,
 - iv. complies with the firm's policies, and
 - v. is being progressed appropriately.
- 40. The format of the Annual Return is currently being updated to include a requirement for CRL Firms to submit details (with supporting documents) of their supervision arrangements.

Effect of not complying with statutory requirements

- 41. Engaging in reserved legal activities when you are unauthorised or not exempt is a criminal offence (s.14 LSA).
- 42. Where an unauthorised person has taken responsibility for the tasks that amount to the conduct of litigation, disciplinary proceedings may be taken against the unauthorised person and, if appropriate, the authorised person and/or firm.
- 43. Section 14(2) LSA provides a statutory defence for a person charged with carrying on a reserved legal activity where they can show that they did not know, and could not

reasonably have been expected to know, that the offence was being committed. This defence is in practice likely to be available in very limited circumstances.

Effect of not complying with regulatory requirements

44. We investigate potential breaches of the CILEX Code of Conduct and other rules in accordance with the [Enforcement Rules](#) and the [Enforcement Handbook](#). Cases making an allegation of a serious nature may be referred to the Disciplinary Tribunal for determination.
45. Where it appears that an unauthorised person has taken control and responsibility for the tasks that amount to the conduct of litigation, disciplinary proceedings may be taken against the unauthorised person and, where appropriate, the relevant authorised person and/or firm where they are regulated by CILEx Regulation.
46. We take a risks-based and outcomes focused approach to enforcement and aim to ensure that any action we take is proportionate, consistent, transparent and targeted at the conduct that pose the biggest risk to the public, reputation of the profession and the regulatory objectives. We are also guided by our organisation values of integrity, excellence, fairness, transparency and efficiency (further details are on the CILEx Regulation website at [Enforcement - Rules and Guidance - CILEx Regulation](#)).