



The Bar Council

Issuing proceedings

Purpose:	To draw barristers' attention to their professional obligations in relation to this subject
Scope of application:	All practising barristers
Issued by:	The Ethics Committee
Last reviewed:	October 2023
Status and effect:	Please see the notice at end of this document. This is not "guidance" for the purposes of the BSB Handbook I6.4.

Q. Our clerks have been asked by solicitors to issue proceedings in the High Court. All the papers have been prepared by the solicitor and they will provide the fee. It is simply more convenient for us to provide this service. Can we do so?

A. This is likely to involve the conduct of litigation. As such, you may not do this as a self-employed barrister unless you have applied for, and been granted, a conduct-of-litigation extension to your practising certificate. If you cannot do this, then your clerks cannot do it either. For more information on conducting litigation, please see the Bar Council's guidance on [Direct Access and Conduct of Litigation](#).

Q. What other activities amount to conducting litigation (which can only be done by barristers who have a conduct-of-litigation extension to their practising certificates)?

A. In addition to the issue of proceedings, the view of the BSB (given in formal Code Guidance¹) is that the following fall within the conduct of litigation:

- Filing an acknowledgment of proceedings;
- giving the barrister's address as the address for the service of documents;
- filing documents at court or serving documents on another party;
- issuing an application;
- issuing a notice of appeal;
- signing off a disclosure list;
- laying an information in a Magistrates' Court.

This list is not exhaustive. Further, the recent decision in **Baxter v Doble** [2023] EWHC 486 (KB) has created some confusion and difficulty: see particularly at [173-215], where the court considered that the issue was whether the entirety of the activities undertaken for the client, taken "in the round", amounted to the conduct of litigation for the client. While the correctness of that conclusion may be doubted, barristers without a conduct-of-litigation extension should proceed with caution. Reference should be made to the latest version of BSB's 'Guidance on Conducting Litigation'² as well as the Bar Council guidance referred to above.

Q. Can I engage an agent to do these things instead?

A. Not unless that person is authorised to conduct litigation. Litigants in person (including a barrister's direct access clients) can conduct their litigation themselves or by engaging an authorised legal representative, such as a solicitor or a barrister authorised to conduct litigation, but not through an unauthorised person.

Q. Is the lodging of documents for hearings conducting litigation?

A. No. This is not the conduct of litigation so long as what is done is secondary to the barrister's role as an advocate. There is therefore nothing wrong with barristers and their clerks lodging documents such as a case summary, chronology, list of issues, skeleton argument, position statement, draft orders.

Q. Does signing a statement of truth amount to conducting litigation?

² <https://www.barstandardsboard.org.uk/uploads/assets/5942518a-3f66-49ae-9d7a0f430c12c3e1/686fcfb-a1ed-481b-86df6e8c31a9d79e/Conducting-Litigation.pdf>. But this Guidance is said to be under review in light of **Baxter v Doble** [2023] EWHC 486 (KB).

A. Not in itself: see the definition of “legal representative” in CPR Rule 2.3. But see the concerns expressed above about the effect of **Baxter v Doble**. However, before signing a Statement of Truth on behalf of a client, a barrister must ensure that the relevant provisions of the Civil Procedure Rules are complied with, in particular CPR Part 22 PD paragraph 3.8.

Q. Can I handle client monies – for example, to make payment to another party of a settlement sum?

No. You cannot receive, control or handle client money unless acting in the capacity of a manager or employee of an authorised (non-BSB): see rC73.

By rC74, if you make use of a third party payment service (such as an escrow service) for making payments to or from or on behalf of your client you must:

- .1 Ensure that the service you use will not result in your receiving, controlling or handling client money; and
- .2 Only use the service for payments to or from or on behalf of your *client* that are made in respect of legal services, such as fees, disbursements or settlement monies; and
- .3 Take reasonable steps to check that making use of the service is consistent with your duty to act competently and in your client’s best interests.

The BSB may give notice under rC75 that (effective from the date of that notice) you may only use third party payment services approved by the BSB or which satisfy criteria set by the BSB. However, it has not so far done so.

Important Notice

This document has been prepared by the Bar Council to assist barristers on matters of professional conduct and ethics. **It is not “guidance” for the purposes of the BSB Handbook I6.4, and neither the BSB nor a disciplinary tribunal nor the Legal Ombudsman is bound by any views or advice expressed in it.** It does not comprise – and cannot be relied on as giving – legal advice. It has been prepared in good faith, but neither the Bar Council nor any of the individuals responsible for or involved in its preparation accept any responsibility or liability for anything done in reliance on it. For fuller information as to the status and effect of this document, please refer to the professional practice and ethics section of the Bar Council’s website [here](#).