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Litigation rights post-Mazur

Kelvin Rutledge KC, Harriet Townsend KC, Josef Cannon KC, Gerard Forlin KC, Jackson Sirica

Mazur v Charles Russell Speechleys LLP

"At the end of the hearing before me, it seemed that some of the legal issues being raised on this appeal may be of wider significance."

Sheldon J.

Legal Services Act 2007

An Act "to make provision for, and in connection with, the regulation of persons who carry on certain legal activities"

LSA Part 3 – Reserved Legal Activities

Section 12(1) designates "the conduct of litigation" as a reserved legal activity.

This is defined in Schedule 2, paragraph 4 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)."

LSA Part 3 – Reserved Legal Activities

Section 13 provides that a person may only carry on a reserved legal activity if they are either:

- **An "authorised person" (as defined in s.18 as someone authorised by a relevant approved regulator such as the Solicitors Regulation Authority), or**

- **An "exempt person" (as defined in s.19 & Sched. 3)**

LSA Part 3 – Reserved Legal Activities

Section 14 makes it both a criminal offence and a contempt of court to carry on a reserved legal activity without entitlement.

Section 16 provides that an employer commits an offence if their employee carries on a reserved legal activity without entitlement even if the employer themselves are entitled to do so.

The *Mazur* case

Mazur & Stuart v Charles Russell Speechleys LLP, The Solicitors Regulation Authority & The Law Society of England & Wales intervening

[2025] EWHC 2341 (KB), Sheldon J (16/09/2025)

https://www.bailii.org/ew/cases/EWHC/KB/2025/2341.html

Mazur – the facts

- Appellant ("M&S") failed to pay fees owed to Respondent firm ("CRS"). Another law firm ("GBS") was instructed to recover them.
- Claim was handled by GBS's non-admitted Head of Commercial Litigation ("PM") under the supervision of a solicitor ("RA").
- M&S contended that PM was not authorised to conduct the litigation and sought an order that he be replaced by a qualified solicitor.
- DDJ stayed the claim and sought an explanation from GBS.
- GBS appealed; reallocated the case to a qualified solicitor and self-reported to the SRA.

Mazur – the facts (cont.)

- SRA decided not to investigate and confirmed in a letter to GBS that:

> *"[GBS's] employees are permitted to undertake reserved legal activities due to section 21(3). We are satisfied that [PM] has not conducted reserved legal activity without entitlement to do so."*

- Section 21(3) defines "regulated persons" as including "persons who are not [authorised to carry on a reserved legal activity) but are employees of a person who is so authorised."

Mazur – the facts (cont.)

- **CJ allowed GBS's appeal and ordered M&S to pay the costs;**
- **M&S appealed to the High Court against that costs order.**
- **The principal issue for Sheldon J was: for the purposes of the LSA, was PM authorised to conduct the litigation under the supervision of RA?**
- **Both SRA and LS invited to make representations**

Mazur - SRA/LS's case in the High Court

Disavowing December 2024 letter:

- **An unauthorised person *supporting* an authorised person in the conduct of litigation is permissible.**

- **However, an unauthorised person *conducting* litigation under the supervision of an authorised person is not.**

Mazur – Sheldon J's holdings

- **As the conduct of litigation is a "reserved legal activity" only persons who are either "authorised" (s.18) or "exempt" (s.19) may carry on such activity.**
- **Mere employment by a person who is authorised to conduct litigation is not sufficient for the employee to conduct litigation themselves, even under supervision.**
- **S.21(3) does not change the position. All authorised persons are regulated but not all regulated persons are authorised.**

Mazur – the outcome

- The costs decision was based on an error law and therefore had to be set-aside.
- For SRA to decide whether PM was in fact conducting litigation.

LSA Part 3 – Exempt persons

LSA, s.19 & sch. 3, para. 2 – in relation to the conduct of litigation:

- **Case-specific authority granted by a court,**
- **Right to conduct litigation in relation to those proceedings granted by or under any enactment,**
- **Litigant in person.**

Examples of a relevant "enactment" (1)

Local Government Act 1972

223.— Appearance of local authorities in legal proceedings.

(1) Any member or officer of a local authority who is authorised by that authority to prosecute or defend on their behalf, or to appear on their behalf in, proceedings before a magistrates' court shall be entitled to prosecute or defend or to appear in any such proceedings, *and to conduct any such proceedings.*"

Examples of a relevant "enactment" (2)

County Courts Act 1984

<u>60.— Right of audience.</u>
(2) Where an action is brought in the county court by a local authority for either or both of the following—
(a) the recovery of possession of a house belonging to the authority;
(b) the recovery of any rent, mesne profits, damages or other sum claimed by the authority in respect of the occupation by any person of such a house,
then, except where rules of court provide otherwise, any officer of the authority authorised by the authority for the purpose may address the court.

Examples of a relevant "enactment" (3)

County Courts Act 1984

60A Rights of audience etc of employees of housing management bodies

(1) An employee of a housing management body who is authorised by that body for the purposes of this section has–

(a) a right of audience in relation to any proceedings to which this section applies, and

(b) *a right to conduct litigation in relation to any such proceedings*.

(NB not yet in force)

Examples of a relevant “enactment” (4)

Health and Safety at Work etc. Act 1974

39.— Prosecutions by inspectors.

(1) An inspector, if authorised in that behalf by the enforcing authority which appointed him, may, although not of counsel or a solicitor, prosecute before a magistrates' court proceedings for an offence under any of the relevant statutory provisions.

The CPR argument

CPR 2.3(1) – "In these rules 'legal representative' means a – (a) barrister; (b) solicitor; <u>(c) solicitor's employee</u>."

PD22, 3.6 allows a legal representative to sign a statement of truth

Rules underpinned by Civil Procedure Act 1997, an "enactment".

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Conducting litigation; supervision & the role of legal executives and paralegals

Harriet Townsend KC

The conduct of litigation #1

"**Reserved legal activities**" (as referred to at section 12(1) of the Legal Services Act 2007 can only be carried out by those authorised to do so, this includes "**the conduct of litigation**".

This is defined in paragraph 4 of Schedule 2 to the 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)".

Underlined text in (b) was new in 2007 (following *Agassi v Robinson* [2005] EWCA Civ 1507 and [2006] 1 WLR 2126).

Meaning considered in case law.

The conduct of litigation #2

O'Connor v BSB (2012)
- BSB had not proved that signing a statement of truth = conducting litigation

Heron Brothers v Central Bedfordshire [2015] EWHC 1009 (TCC)
- Judge referred with approval to the Court's judgment in *Agassi* at 56.
- Held *I see no reason to construe the definition of the conduct of litigation as extending to any activities that take place prior to the issue of proceedings and which do not involve any contact with the court. For example, advising on the merits of starting proceedings or drafting Particulars of Claim.*

Ndole Assets Ltd v Designer M&E Services [2018] EWCA Civ 2865
- Formal service of a claim form is conducting litigation [65]
- Does that mean a process-server or postal employee is conducting litigation? No [67]

The conduct of litigation #3

Substance has to prevail over form [*Ndole* at 67]:-

- *That distinguishes between those who merely perform an administrative or mechanical function in connection with service of documents and those who undertake, or who have assumed, legal responsibility with regard to service as prescribed by the rules. This in fact, I consider, accords with the acceptance by the court in Agassi in paragraph 43 of the judgment that the statutory prohibition does not extend to "what might be termed purely clerical or mechanical activities." Thus the solution is to be found not so much in focusing on the issue of agency or sub-agency but in focusing on the actual role of, and the actual activity undertaken by, the person in question. That is why process-servers and the like are not within the statutory prohibition: they are simply engaged in the "mechanical" activity of actually delivering the claim form. Delivery, for these purposes, is not to be equated with service of a claim form as prescribed by the rules.*

Baxter v Doble [2023] EWHC 486 (KB) and [2023] 1WLR 2948

- An application for committal for contempt of a legal exec and her company.
- Applied *Ndole*: Question of fact and degree in light of whole service offered: actions (eg giving legal advice and taking steps on behalf of the party prior to the commencement of proceedings) are relevant to the conclusion.
- D had been conducting litigation but the statutory defence under s14(2) applied and appl. dismissed.

Supervision

There is no exemption for those acting under supervision; and there is no statutory definition of supervision.

Mazur (2025)
At 41:-
The SRA was not able to identify a case in which a Court had to consider directly ***at what point a non-authorised person ceases merely to support or assist an authorised person but assumes the conduct of litigation****. The SRA suggested that the matter could be determined by having regard to the text and purpose of the LSA as well as "four key points of principle" identified by the Court of Appeal in* _Baxter_ *at [181]-[184]: (i) the starting point must be the statutory language itself, and the statutory words must be given their natural and ordinary meaning; (ii) the legislation is penal in nature, and so in principle should be construed narrowly; (iii) substance must prevail over form; and (iv) the question is one of fact and degree in every case.*

M invited the court to consider the substance of PM's role and argued he had given "full service assistance" to CRS. [43]. Declined to do so: it would interfere with any regulatory intervention that the SRA may wish to consider and would be unfair since PM was not a party to the appeal or proceedings below [67].

Key points

- The prohibition is the same for all of us who are not authorised to conduct litigation. Guidance published by SRA or LSB or BSB cannot be decisive as to the meaning of the statutory provisions, but might help to justify an individual defendant facing sanctions (*Baxter*).
- Since the provision carries a penal sanction it should be interpreted "narrowly".
- The guidance given by Dyson LJ in *Agassi* on the term "ancillary" [§56] continues to be cited with approval.
- Unless authorised or exempt under the LSA 2007, a person is not permitted to conduct litigation. It is the individual or organisation which conducts litigation who/which is at risk of sanctions under the 2007 Act. Breach does not nullify the proceedings themselves (*Ndole*).
- The question whether a person has conducted litigation can only be decided on a case by case basis and in the light of a full understanding of the service they provided overall.
- Actions undertaken under supervision: In cases of doubt, obtaining case-specific and/or service-specific legal advice is likely to be essential.

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The reaction of the profession and responses of its regulators

Josef Cannon KC

LSB

LEGAL SERVICES
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‘On 9 October 2025, the LSB met senior executives from all relevant approved regulators and representative bodies.

‘At our meeting, we emphasised that lawyers and legal professionals conducting litigation need clear and accurate information. Furthermore, all regulated individuals must work within their authorised scope of practice. We stressed the importance of collaboration between the relevant bodies to ensure a consistent approach across the sector.

‘The attendees agreed to work together on these issues. They also told us that they had reviewed their current guidance. If needed, they had issued more advice to provide clear and accurate information.

‘Meanwhile, the LSB has received an application from CILEx Regulation. It is to enable its regulated community to obtain standalone litigation practice rights. We have published the application on our website. We are prioritising the application within our statutory process.

‘To establish what happened in the past, we will undertake a review. This will examine how approved regulators and regulatory bodies ensured that information on conducting litigation was accurate and reliable. Our review will help us all learn lessons and maintain clarity and confidence in the regulatory framework.’

LSB LEGAL SERVICES BOARD

CILEX

Message to members: Mazur v Charles Russell Speechlys

2 October 2025

This ruling applies to members involved in litigation who do not hold practice rights in their specialism, and members with practice rights who are supervising legal professionals without authority to conduct litigation. The court determined that anyone not authorised to conduct litigation cannot do so under supervision. You may provide support and assistance to an authorised colleague (ie. a solicitor or CILEX Lawyer) but you cannot conduct litigation yourself without the relevant practice rights.

This means CILEX members who work in litigation and do not have practice rights are not authorised to conduct litigation. You must ensure your contribution remains strictly in assisting the authorised person who conducts the litigation.

CILEX

CILEx Regulation

Interim Guidance

The conduct of litigation and supervision

https://cilexregulation.org.uk/wp-content/uploads/2023/04/Revised-Interim-CRL-guidance-the-conduct-of-litigation-v4.pdf

Legal executives facing an uncertain future following the *Mazur* ruling have pleaded with regulators to make immediate changes to protect their livelihoods.

The newly-formed CILEX Support Group, which now has more than 1,300 members, has written to the Legal Services Board asking to resolve this issue.

There are already reports that firms have culled staff who are no longer considered able to conduct litigation – even under supervision – following the judge's remarks in last month's *Mazur* judgment.

Since the judgment it has emerged that CILEX had regularly given its members false assurances that they could work under supervision. The organisation has continued to maintain that it kept members properly informed.

CILEX

Meanwhile, CILEx Regulation met this week and has agreed to provide amnesty for legal executives who may unwittingly have breached the law.

Chair Jonathan Rees said: ‘We had a good discussion on what, if any, retrospective enforcement action should be taken and agreed that CILEX members practising in line with the prevailing guidance and their firms’ procedures in operation at the time pre-Mazur are not required to self-report to CRL.’

NB CILEx Regulation have applied to the LSB for CILEx fellows to obtain standalone litigation practice rights

CILEx Regulation

The Law Society

The Law Society

"We are aware that *Mazur* created uncertainty across the legal profession," said Law Society president Mark Evans.

"While the judgment does not change the statutory requirements relating to authorised conduct of litigation as a reserved legal activity, we hope this practice note will provide greater clarity to our members.

"However, there remain grey areas where further guidance from regulators and others is required."

Law Society Guidance Note

https://www.lawsociety.org.uk/topics/regulation/mazur-and-the-conduct-of-litigation

24 Oct 2025 • 14 minutes read

This practice note is the Law Society's view of good practice in this area, and is not legal advice. For more information, see the legal status.

Solicitors Regulation Authority

SRA on 1-10-25 : restated their 2022 guidance:

'People who are not themselves authorised to conduct litigation can only support authorised individuals to conduct litigation, rather than conducting litigation themselves under the supervision of an authorised individual.'

https://www.sra.org.uk/news/news/mazur-charles-russell-speechlys/

LPC LAW

On a final note, LPC Law have received a few queries about whether the judgment has any impact upon the practice of instructing **solicitors' agents** to attend hearings in chambers?

It does not. In accordance with the provisions of the Legal Services Act 2007, the role of our advocates is limited to "assisting in the conduct of litigation".

Furthermore, whilst exercising a right of audience is a reserved legal activity, our advocates are recognised as being entitled to do so in chambers as Exempt Persons in accordance with a specific exemption under the Legal Services Act 2007 (see ***Halborg v Apple (UK) Ltd***).

BAR STANDARDS BOARD

News Announcement

14 Oct 2025

We are aware of the **recent judgement in the Mazur case** on who may conduct litigation. Our view of the judgement is that it does not change the law in this area. Barristers should continue to refer to our guidance on conducting litigation, which provides advice on which activities fall within the reserved activity of ‘conduct of litigation’. That advice is available **here**. We are considering whether any further guidance would be helpful, in consultation with other legal regulators and the Bar Council.

Key points

- Most regulators are saying ‘nothing new here’ while also acknowledging concern
- Some have published guidance/practice notes
- Emphasis on ‘case by case basis’ approach to what is conducting litigation, on particular facts
- Concern about pre-ruling unlawful activity and whether that will be prosecuted

Criminal liability, defences and the likely stance of prosecuting authorities

Gerard Forlin KC, FRAeS, BL (Ireland)

Legal Services Act 2007 - Extract

12. Meaning of "reserved legal activity" and "legal activity"

Meaning of "reserved legal activity" and "legal activity"

(1)In this Act "reserved legal activity" means—

(a)the exercise of a right of audience;
(b)the conduct of litigation;
(c)reserved instrument activities;
(d)probate activities;
(e)notarial activities;
(f)the administration of oaths.

(3)In this Act "legal activity" means—

(a)an activity which is a reserved legal activity within the meaning of this Act as originally enacted, and
(b)any other activity which consists of one or both of the following—
(i)the provision of legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes;
(ii)the provision of representation in connection with any matter concerning the application of the law or any form of resolution of legal disputes.

Legal Services Act 2007 - Extract

14. Offence to carry on a reserved legal activity if not entitled

(1) It is an offence for a person to carry on an activity ("the relevant activity") which is a reserved legal activity unless that person is entitled to carry on the relevant activity.

(2) In proceedings for an offence under subsection (1), it is a defence for the accused to show that the accused did not know, and could not reasonably have been expected to know, that the offence was being committed.

(4) A person who is guilty of an offence under subsection (1) by reason of an act done in the purported exercise of a right of audience, or a right to conduct litigation, in relation to any proceedings or contemplated proceedings is also guilty of contempt of the court concerned and may be punished accordingly.

15. Carrying on of a reserved legal activity: employers and employees

(1) This section applies for the interpretation of references in this Act to a person carrying on an activity which is a reserved legal activity.

(2) References to a person carrying on an activity which is a reserved legal activity include a person ("E") who—

(a)is an employee of a person ("P"), and
(b)carries on the activity in E's capacity as such an employee.

(3) For the purposes of subsection (2), it is irrelevant whether P is entitled to carry on the activity.

(4) P does not carry on an activity ("the relevant activity") which is a reserved legal activity by virtue of E carrying it on in E's capacity as an employee of P, unless the provision of relevant services to the public or a section of the public (with or without a view to profit) is part of P's business.

(5) Relevant services are services which consist of or include the carrying on of the relevant activity by employees of P in their capacity as employees of P.

16. Offence to carry on a reserved legal activity through person not entitled

(1) Where subsection (2) applies it is an offence for a person (“P”) to carry on an activity (“the relevant activity”) which is a reserved legal activity, despite P being entitled to carry on the relevant activity.

(2) This subsection applies if—

(a)P carries on the relevant activity by virtue of an employee of P (“E”) carrying it on in E's capacity as such an employee, and
(b)in carrying on the relevant activity, E commits an offence under section 14.

(3) If P is a body, references in subsection (2) to an employee of P include references to a manager of P.

(4) In proceedings for an offence under subsection (1), it is a defence for the accused to show that the accused took all reasonable precautions and exercised all due diligence to avoid committing the offence.

See also:

- **S13 of the LSA:** Entitlement to carry on a reserved legal activity
- **The Mazur Judgement:** see paragraphs 18, 25, 37, 48 et sep and paragraph 51 -56 and 60-67.
- **Practical issues and various guidance:** For example The Law Society briefing note of 24th October. Please see Paras 5.1 Civil Litigation, 5.3 Criminal Litigation, 5.4 Practical Steps to take, and 6 Consequences of Breach

The Future?!

- Regulatory Enforcement – if so, when?
- Will there be more prosecutorial interest?
- Potential Penalties
- Practical issues

Invalidity, costs & satellite litigation

Jackson Sirica

Steps taken by a person conducting litigation without authorisation

- In *Mazur*, of course, the Judge at first instance had **stayed** proceedings because he considered that the person conducting the litigation might have been doing so unlawfully.

- By the time the matter got to the High Court, the steps taken in the proceedings had been “put right”, with a solicitor signing off the necessary documents. Sheldon J did not have to deal with the issue, as matters had moved on.

- But what is the position where the Court **does** need to decide the validity of steps taken by, for example, a paralegal, when the issue is raised for the first time on the day of trial?

Procedural Considerations

- The starting point is that an allegation that someone has conducted litigation in breach of the LSA 2007 is an allegation, potentially (and subject to applicable defences), of a criminal offence.

- In most cases, the main target of that allegation – the person conducting litigation – will not be party to the proceedings in their own right. In our view, supported by the statement at [67] of the *Mazur* judgment, the issue should not be determined without joining that person as a party and giving them the opportunity to give evidence in their defence.

- If the issue is raised, the statutory defence in s.14(2) that "the accused did not know, and could not reasonably have been expected to know, that the offence was being committed" may be relevant, depending on the facts.

But does it make a difference to the litigation in issue?

- The relevant authority is *Ndole Assets Ltd v Designer M&E Services UK Ltd* [2018] EWCA Civ 2865.

- In that case, it was alleged that service of the claim form (among other actions) constituted the conduct of litigation. The Court of Appeal accepted that point. Having accepted it, the question was whether the proceedings were invalid for that reason.

- *Ndole* supports the proposition that steps taken in litigation which amount to the unlawful conduct of litigation are not, for that reason, invalid (or, to put it another way, a nullity).

Ndole

"74. It was the submission of Mr Darling that the service of the claim form was accordingly invalid. When pressed as to what he meant by that, he said that the service of the claim form, unlawful means having been used, had been a nullity and of no effect. Alternatively, he submitted that the court should, in its discretion, set service aside.

75. The consequences of a breach of a statutory provision are, in the ordinary way, to be found in the scheme and terms of the statute itself: see, for example, *R v Soneji [2006] 1 AC 340* . **In the present case, our attention was not drawn to any statutory provision in the 2007 Act stipulating the consequence (in terms of validity) for an act of conduct of litigation being performed by a person neither authorised nor exempted by the statute**.

76. **In my view, nullity is not to be taken as the statutorily intended consequence**. As Ms Sinclair pointed out, there is no reason why so draconian a consequence should be intended to be visited on the client or principal, who ordinarily will have been entirely ignorant of the point. As she also pointed out, there could be grave implications for other reserved legal activities if it were otherwise: for example, probate activities and reserved instrument activities…"

Costs

- Costs, particularly relating to issues in detailed assessments, is a complex and technical area. For today's purposes, we simply draw attention to a significant authority in the area.

- In *Agassi v HM Inspector of Taxes* [2005] EWCA Civ 1507, Andre Agassi challenged findings in relation to his liability for income tax. He succeeded on appeal in the Court of Appeal. He had used specialist tax advisors – not solicitors – who had instructed counsel by way of licensed access. HMRC challenged Mr Agassi's entitlement to recover their costs.

- The Court of Appeal recorded at paragraph 20 of its judgment that it was common ground between the parties that recoverable costs could not include costs of activities which were, themselves, unlawful.

- How this will apply in the wake of *Mazur* (and particularly the procedural issues discussed earlier) may require further guidance from an appellate court.

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Ensuring compliance

Kelvin Rutledge KC

Ensuring compliance

1. Review
2. Reallocate
3. Remedy
4. Educate
5. Supervise
6. Report
7. Record

Self-reporting

"You report promptly to the SRA, or another approved regulator, as appropriate, any facts or matters that you reasonably believe are capable of amounting to a serious breach of their regulatory arrangements by any person regulated by them (including you) of which you are aware. If requested to do so by the SRA, you investigate whether there have been serious breaches that should be reported to the SRA."

SRA Code of Conduct for Firms, para. 3.9

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THANK YOU

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Litigation rights post-Mazur

Kelvin Rutledge KC, Harriet Townsend KC, Josef Cannon KC, Gerard Forlin KC, Jackson Sirica