

What is to be done about Mazur?

What constitutes the conduct of litigation?

What can be done by non-qualified personnel?

ROGER MALLALIEU KC

WHITE PAPER CONFERENCE

12 MARCH 2026



Mazur – what’s it all about?

Mazur & Stuart v Charles Russell Speechlys LLP [2025] EWHC 2341(KB);

- **Sheldon J, on appeal from HHJ Simpkins;**

- A debt claim by CRS for outstanding fees for work done for M&S;
- CRS instruct GBS. Claim Form and PoC signed by PM - “Head of Commercial Litigation”;
- PM was not a practising solicitor. M&S sought a stay until he was replaced;
- DDJ Campbell ordered a stay. Concerned PM was “conducting litigation” – a reserved legal activity within s.12 LSA 2007;
- GBS self reported to the SRA, which decided not to investigate and said;

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

- S.21(3) provides that employees of authorised persons are regulated (not authorised).
 - NOT a great start...

Mazur – the original decision;

- **GBS in any event replaced PM with a qualified solicitor and applied to lift the stay**
 - GBS also accepted PM had not been entitled to perform a reserved legal activity, but stated that he had not done so – all (relevant) work had been done “under supervision”;
 - HHJ Simpkins;
 - Lifted the stay, on the basis that any breach of the LSA was now cured;
 - Order service of amended Claim Form and POC, with statement of truth signed by authorised person;
 - Ordered M&S to pay the costs of the stay application (circa £10k).
 - Relied on the SRA letter to conclude that PM had not conducted a reserved legal activity without entitlement.
- M & S appealed against the costs order (not the lifting of the stay) on the basis the Judge was wrong to say PM was entitled to conduct reserved legal activities.

Mazur – the first appeal;

- **The big issue – was PM entitled to conduct litigation under supervision?**
 - M&S case – supervision is not enough. The person conducting the litigation must be authorised and cannot rely on the authorisation of the supervisor;
 - The case was not therefore about the existence or quality of the supervision – this was assumed to be adequate.
 - It was about whether the general conduct of litigation can only be done by an authorised person (“**AP**”)
 - If so, that AP, however junior and whether supervised or not can undertake that work (assisted by others);
 - But an unauthorised person (“**UAP**”) (in the LSA 2007 Act sense) cannot undertake that work;
 - No matter how senior or experienced;
 - No matter whether supervised or not.

Mazur – the first appeal;

- The Law Society and the SRA were invited to intervene;
 - The Law Society; a UAP can support an AP in the conduct of litigation, but cannot undertake conduct of litigation themselves, regardless of supervision;
 - The SRA; agreed with the LS – and contradicted its own previous assertion that being an employee of an AP permitted a UAP to undertake reserved legal activity.
- **The conclusion;**
 - S. 21(3) did not authorise an employee to conduct litigation;
 - “Accordingly...” PM was not authorised and was not able to undertake reserved legal activity, even if supervised;
 - The Judge should not have awarded costs against M&S because they had been right about the point of law – but made no order as to costs, since they should not have opposed the lifting of the stay.

Mazur – the second appeal;

- **The refinement (?) of the issues. Prima facie two issues?**
 - What acts require authorisation?
 - Can those acts be conducted by a UAP provided they are employed / supervised by an AP?
- Broadly, a third issue was introduced, which may be central;
 - What acts require authorisation – what is the conduct of litigation?
 - Can those acts be conducted by a UAP provided they are supervised or employed by an AP?
 - In any event, if an AP is responsible for those acts, is it the AP, and not the UAP, that is conducting the litigation?
 - Put another way – under s.14 LSA 2007, if a UAP is undertaking much of the work, but doing so under the supervision of an AP, who is responsible for it, who is “carrying on” the activity?
- And perhaps a fourth issue – if responsibility suffices, what is required to establish de facto responsibility?

Mazur – the second appeal and the issues;

- **The statutory framework – Legal Services Act 2007**

- S.12 defines reserved legal activity – including exercise of a right of audience and the conduct of litigation;
- S.13 says the question of whether a person is entitled to carry on a RLA is to be determined solely in accordance with the provisions of the Act and that to be so entitled they must be “authorised” or “exempt” (such as where granted a specific right by a court – Sch. 3).
- S.14 makes conduct of an RLA without entitlement a criminal offence.
- Sch.2 defines the conduct of litigation;

“a. the issuing of proceedings before any court in England and Wales,

b. the commencement, the 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)”

Mazur – the second appeal and the issues;

- **Back to the issues – issue 1 – what is the conduct of litigation?**

- A central part of the difficulty – if “conduct of litigation” is widely defined, then per Mazur, the acts a UAP can do are severely limited – and can’t be saved by supervision;
- Mazur does not seek to address what is “conduct of litigation” – but followed Baxter v Doble [2023] EWHC 486 (KB) (Cavanagh J).
- In Baxter, the issue was whether a member of CILEX had crossed the line into conducting litigation by assisting a landlord with a claim for possession and arrears of rent. The answer was “yes”;

“The Respondents did everything for [L] in relation to the proceedings that a solicitor or other authorised person would have done. They gave full-service assistance to [L], including drafting all of the documents required to comply with formal requirements, giving instructions to counsel, making a payment to court, corresponding with the other side, and ensuring that all procedural steps complied with the CPR. Someone must have conducted this litigation, and it would be wholly artificial to say that [L] did it himself, albeit with support and guidance from the Respondents. This would be to under-state their involvement. They conducted the litigation for him.... The only difference in this case from that which a solicitor or other authorised person would have done is that the Respondents did not formally go on the record or use their own notepaper for covering letters when dealing with the court” [211-2]

What could be derived from earlier legislation / cases?

- **Pre LSA 2007, it was the CLSA 1990?**
 - S.119 “Right to conduct litigation” means the right;
 - (a) to issue proceedings before any court;
 - (b) to perform any ancillary functions in relation to proceedings (such as entering appearances)...
- But also – pre CLSA 1990, s.20 Solicitors Act 1974 had prohibited an “unqualified person” from “acting as a solicitor... including “commencing, prosecuting or defending any action”
- In *Agassi v S Robinson (HM Inspector of Taxes) (No 2)* [2005] EWCA Civ 1507, CA took a narrow view of what amounted to “acting as a solicitor”, “conducting litigation” and “performing ancillary functions”, but did not approve a list of steps a UAP could take (see Coulson LJ in *Ndole* [2017] EWHC 1148;
- It considered “ancillary functions” were limited to formal steps required in the conduct of litigation, but not, for example, corresponding with the opponent – but (per Cavanagh J) did not decide whether matters such as corresponding with the opponent were the conduct of litigation.

Identifying what the conduct of litigation is

- **The Court of Appeal in Ndole**

“...substance has to prevail over form... the pragmatic solution here... is the correct solution. 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... 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.

...The question thus becomes one of fact and degree in each case. [S] submitted that would lead to uncertainty. But as to that I strongly suspect that issues of the present kind with regard to service of a claim form are likely to be rare; and in the more general context of the right to conduct litigation, an approach permitting individual assessment of the activity undertaken in an individual case is, by reason of its very adaptability to the circumstances of the particular case, much more likely to achieve justice than a rigid application of an agency-based approach.”

- Service of a claim form and POC by a claims consultant was conduct of litigation.
- Beyond that – no guidance.
- But note – cases such as Ndole were about whether the act = conduct of litigation – not about whether it could be done by a UAP if an AP was responsible for it.

Identifying what the conduct of litigation is;

- **In Baxter, the Law Society said**
 - The LSA definition is wider than the CLSA 1990 definition;
 - Purely mechanical steps were fine, as was the giving of advice;
 - But *“taking steps which are more than purely mechanical”* may be conduct of litigation;
 - And this includes sending drafted documents to third parties
 - But it’s a question of fact and degree – substance, not form;
 - May need to look at totality, or series, of actions
- Cavanagh J essentially accepted this approach

Baxter and the conduct of litigation

- So – conduct of proceedings included;
 - service of a defence, issue of a claim (even as agents and under client’s name and even if not on the record) – the “formal steps” point
- But in isolation did not include;
 - Giving of legal advice, even about procedure;
 - Pre-action drafting of notices which might avoid proceedings;
 - Any other step pre issue;
- However, those steps, looked at in the round with others, might mean that overall X had been conducting litigation – the “full service” analysis.
- Conduct of litigation was “no longer” limited to formal steps in proceedings as per Agassi.
- But again, note, Baxter was about whether a UAP was conducting litigation for a client, not about delegation of tasks by an AP.

Back to Mazur (1) – the second (and third) issue

- **So, we have a rather fuzzy definition of the conduct of litigation, but one that (per Baxter) (a) is wider than pre LSA 2007 and (b) involves looking at matters in the round, not just individual steps in isolation;**
 - So, it is not good enough to have a UAP conduct the claim generally, provided an AP takes the formal steps (e.g. issue and serve);
- But does that matter if an AP supervises the UAP, or the UAP is employed – the narrow s.21(3) issue;
 - The s.21(3) argument was plainly wrong, as the SRA had recognised. S.21(3) was about ensuring employees of authorised persons were regulated, not about giving them authorisation to conduct litigation;
 - The fact the employer is an AP, plainly does not make the UAP an AP;
 - So, on that narrow point, the appeal fell to be allowed.
- But then the third issue was introduced – not about employment, but supervision and responsibility;
 - Not properly addressed;
 - The approach through s.21(3) disguised the real issue.

Mazur (2) – crystal ball gazing;

- **What acts require authorisation – what is the conduct of litigation?**
 - An attack on Baxter – that there was a failure to define the issue narrowly;
 - Was the LSA 2007 really intended to restrict practice? Litigation has long been carried out by articled clerks etc, but ‘conducted’ by the partner.
- **Can those acts be conducted by a UAP provided they are supervised by an AP?**
 - Is this really the point? Is anyone really suggesting that a UAP can “conduct litigation” merely because employed or ‘supervised’? Is ‘supervision’ more properly an aspect of ‘responsibility’?
- **In any event, if an AP supervises and takes responsibility for those acts, is it the AP, and not the UAP, that is conducting the litigation?**
 - The more central point? Bar very limited formal steps (and query even then) any step (or overall conduct) which would amount to conduct of litigation is fine provided that an AP is responsible for it, even if performed by a UAP “assisting” that person;
 - Not an issue really addressed by the earlier cases (e.g. Ndole etc) – or Mazur (1)?
 - Does delegation of the task matter, if responsibility remains with the AP?

In the interim

- Hopefully a short interim...
- Experienced litigators relying on individual exemptions under s.13(1)(b) may have a hard time;
 - See HHJ Farquhar in XX v GH [2026] EWFC 51 (B);
 - If Mazur is right, repeatedly granting individual exemptions is circumventing the statute.
- Ensuring formal steps are only taken by an AP;
- Demonstrating responsibility for other steps – assume for now that “responsibility” is much more hands on than it might have been to date;
 - Fact and degree matters – and probably will still matter post Mazur (2) (and 3?);
 - Query if any guidance will be given on what is needed for ‘responsibility’ to be made out?
- Be aware of what Mazur (1) does – and does not – say.

Thank you

ADDRESS

4 New Square Chambers
Lincoln's Inn
London
WC2A 3RJ

CONTACT

+44 20 7822 2000
clerks@4newsquare.com

