Costs Law Update

Autumn 2025 – Mazur Special

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The Potential Impact of Mazur – 'Earthquake' and 'Bombshell'

The decision in *Mazur & Anor v Charles Russell Speechlys LLP* [2025] EWHC 2341 (KB) has been described as an 'earthquake' and 'bombshell' decision, and may have a profound effect on the way that many firms operate in the future.

1. Many firms/fee earners may have already, inadvertently, committed criminal offences on multiple occasions.
2. There are likely to be numerous challenges raised to between-the-parties costs recovery.
3. Clients may successfully challenge significant work that has already been undertaken/billed.
4. At best, many firms may have to completely restructure the way they operate.
5. At worst, certain types of work may become entirely unprofitable.

The starting point is to understand that certain tasks that lawyers undertake are treated as being '**reserved legal activities**' under the Legal Services Act 2007 (the LSA). The LSA restricts who may undertake such work. Section 12 lists various types of work that fall into this category including 'the conduct of litigation'. Paragraph 4 of Schedule 2 to the LSA then defines what this means:

"(1) The "conduct of litigation" means—

(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)."

The LSA permits an 'authorised person' to undertake 'reserved legal activities' (and there are also certain limited circumstances where a person may be exempt from the restrictions).

Importantly, section 14(1) makes it a criminal offence to undertake a 'reserved legal activity' when not permitted to do so:

> "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."

Equally, undertaking such an activity would amount to contempt of court (section 14(4)). Section 15 makes it clear that the employer can also be committing a criminal offence by virtue of their employees' actions.

The LSA also deals with the various ways that individuals may be authorised to undertake certain types of 'reserved legal activities': Qualified solicitors with a current practising certificate are authorised by the SRA to undertake 'the conduct of litigation'. In a similar fashion, qualified Costs Lawyers with a current practising certificate are authorised by the CLSB to undertake 'the conduct of litigation' so far as it only relates to costs.

Firms of solicitors will often consist of a number of different types of fee earner:

- Those who are authorised individuals – most commonly qualified solicitors.
- Those who are unauthorised individuals – e.g. previously admitted solicitors who no longer hold a practising certificate, trainee solicitors, paralegals/litigation executives (or whatever other term they go by), etc.

The issue that arose in *Mazur* was that proceedings had been issued in relation to a debt recovery matter by a firm of solicitors, with the particulars of claim signed by a fee earner described as the 'Head of Commercial Litigation'. This individual did not hold a current practising certificate. It was clear that this individual had conduct of the claim. A witness statement was produced, that was not challenged, stating that the work performed by this individual had been done under the supervision of a practising solicitor.

The issue for the court to decide was whether an unauthorised individual was entitled to conduct litigation under the supervision of an authorised individual. The short answer to that question was 'no'. The key passage is at paragraph 49 of the judgment:

> "Mere employment by a person who is authorised to conduct litigation is not sufficient for the employee to conduct litigation themselves, even under supervision. The person conducting litigation, even under supervision, must be authorised to do so, or fall within one of the exempt categories. In my judgment, this is the proper construction of the LSA."

What does this mean in practice? Some guidance is given later in the judgment:

> "Both the Law Society and the SRA in their submissions to the Court distinguish between (a) supporting an authorised solicitor in conducting litigation and (b) conducting litigation under the supervision of an authorised solicitor. They contend that activities falling within (a) are permitted, but those falling within (b) are prohibited by the statutory regime. I agree with this analysis ...
>
> This analysis is also supported by the text of the LSA itself. The LSA expressly contemplates that there will be persons falling within category (a); that is, persons who "assist" in the conduct of litigation: see paragraph 1(7)(a) of Schedule 3 to the LSA (a provision is concerned with the exemption for the purpose of exercising a right of audience before a court). There is nothing in the LSA, however, which contemplates category (b): that is, a person who conducts litigation under the supervision of an authorised solicitor. The absence of such a category is highlighted by the fact that there is express reference in the LSA to an individual who carries on a "Reserved instrument activity" at the direction and "under the supervision of another individual": see paragraph 3 of Schedule 3 to the LSA."

Mazur is a binding High Court decision. Unless and until it is overturned, unauthorised fee earners are not permitted to 'conduct litigation'. They can only assist authorised fee earners.

What About Pre-Issue Work?

Lawyers are desperately trying to understand the full impact of *Mazur*.

Mazur interprets the LSA as meaning that an unauthorised individual can support an authorised solicitor in conducting litigation, but an unauthorised individual cannot themselves conduct litigation even under the supervision of an authorised solicitor.

This, naturally, begs questions as to what amounts to the 'conduct of litigation', and to what extent is certain work now 'off-limits' to unauthorised individuals?

The key authority on this issue, not least because it provides a comprehensive review of earlier authorities, is *Baxter v Doble & Anor* [2023] EWHC 486 (KB) (08 March 2023). The facts are not particularly relevant for current purposes as the case concerned a firm that was clearly not authorised to conduct litigation. Nonetheless, the decision examines what actions might amount to the conduct of litigation. Crucially, paragraph 206 concludes:

> "in light of the statutory language and the ruling in *Ndole*, no step that is taken prior to the issue or commencement of proceedings can amount to the conduct of litigation."

This clearly significantly narrows the potential significance of *Mazur*. There appears to be nothing to prevent unauthorised individuals from having their own caseload so long as they cease to have overall conduct of the claim if proceedings become necessary. Volume personal injury firms should be able to allow unauthorised individuals to have their own caseloads dealing with portal claims up to (but not including) the issuing of Part 8 proceedings.

What Work Can a Grade D Undertake?

What tasks can Grade D fee earners undertake in light of *Mazur*? Is this the death of the Grade D fee earner?

In fact, Mazur is of far wider application than just to Grade D fee earners. Grade C fee earners are described in the *Guide to the Summary Assessment of Costs* and in the Guideline Hourly Rates as 'other solicitors or legal executives and **fee earners of equivalent experience**'. It is therefore acknowledged that non-authorised fee earners may, subject to experience, be properly treated as Grade C fee earners. Further, there will be many other unauthorised, but experienced, fee earners who may be charged out at rates equivalent to Grade B or higher, and such rates may be claimed (if not necessarily recovered) from the paying party. In *Mazur* itself, the fee earner in question went by the title of 'Head of Commercial Litigation' (and is described on the firm's website as having over 25 years' experience), quite possibly, therefore, justifying rates equivalent to Grade B.

Mazur is clear than an unauthorised individual cannot conduct litigation.

As mentioned above, there should be no problem with unauthorised persons undertaking pre-litigation work.

So far as post-litigation work is concerned, the key issue is probably not what work the unauthorised fee earner is undertaking, but whether an authorised fee earner is controlling/directing the litigation.

If that analysis is correct, there is nothing to prevent an unauthorised fee earner undertaking tasks such as:

- Drafting Claim Forms
- Drafting Particulars of Claim
- Drafting instructions to medical experts
- Drafting instructions to Counsel
- Drafting witness statements
- Drafting schedules of loss
- Preparing advices on quantum

The crucial question is why are they doing this? If the answer is that they have decided to undertake these tasks because it is 'their case' and they are making the decisions as to what steps to take, this is likely to amount to conducting the litigation and fall foul of the LSA.

On the other hand, if they are completing these tasks at the specific request of an authorised fee earner who is the decision-maker, this should be permissible. This would then fall within 'supporting an authorised solicitor in conducting litigation', which *Mazur* expressly identified as being permissible.

More difficult issues arise as to what level of supervision is required when such work has been delegated. *Mazur* rejected 'supervision' as being of assistance as to what an unauthorised individual could or could not do. It may therefore be that once a task has been properly delegated by an authorised individual there is then no formal requirement for such work to be supervised in the traditional sense. The unauthorised fee earner is 'supporting' the authorised fee earner by undertaking the work. On the other hand, it is very easy to see that a court may be very suspicious as to who is really conducting the litigation if the work has not been properly checked by the fee earner who supposedly has conduct of the litigation.

Unauthorised Fee Earners Acting Alone

If an unauthorised fee earner is able to:

- Deal with their own cases up to the point proceedings are issued; and
- Undertake most post-litigation work so long as the case itself is being conducted by an authorised individual,

is there any work that an unauthorised fee earner can undertake where there is **not** an authorised individual with conduct of the litigation.

Baxter is authority for the proposition that the giving of legal advice is permitted. See paragraph 203:

> "The giving of legal advice in itself does not amount to the conduct of litigation. This applies even if the legal advice is about the procedures that need to be followed in the proceedings. This was said in *Agassi*, at paragraph 56, and, in my view, it still holds good."

Correspondence with another party to litigation is also probably permissible. Although dealing with the earlier legislative regime of the Courts and Legal Services Act 1990 rather than the LSA 2007, in *Agassi v HM Inspector of Taxes* [2005] EWCA Civ 1507 the Court of Appeal at paragraph 56 stated:

> "In our view, even if, as the Law Society submits, correspondence with the opposing party is in a general sense 'an integral part of the conduct of litigation', that does not make it an 'ancillary function' for the purposes of section 28."

For similar reasons, it is probable that undertaking negotiations with an opposing party would also not amount to conducting litigation.

However, there is a danger in looking at specific steps in isolation. As noted in *Baxter*:

> "In my judgment, the answer is that the court should look at the entirety of the activities undertaken by the Respondents to assist their client and then decide whether, taken in the round, they amount to the conduct of litigation. To do otherwise would be to lose sight of the context in which things are being done, and would lead to the risk of a misleading impression being gained. It would also run the risk of form being prioritised over substance.
>
> The authorities show that it is the totality of the activities that have been undertaken that should be focused upon. In *Ndole*, in the context of consideration of whether service of documents amounted to the conduct of litigation, the Court of Appeal expressly took account of the whole course of events, including correspondence that had passed from the consultants to the defendant in the proceedings (judgment, paragraph 71). Similarly, in *Gill v Kassam*, the judge looked at the "package of services" that were provided by the advisors to the client (paragraphs 47 and 48). A similar approach was adopted in *Peter Schmidt*.
>
> It is true that this marks a difference from the position under the 1990 Act. Under that Act, as the Court of Appeal said in *Agassi*, an activity would only fall within the definition of the conduct of litigation if it was a formal step in the proceedings. However, in my view this no longer applies, because the additional wording introduced in the 2007, which includes the prosecution and defence of proceedings, is not apt to cover formal steps in the proceedings and nothing else. The words used in the 2007 Act, referring to 'prosecuting' and 'defending' the proceedings, are not words that Parliament would have used if it had intended only to refer to narrow or technical steps."

What Does This Mean for Advocacy?

What does *Mazur* mean for advocacy? The short answer is nothing.

Mazur was concerned with the discrete issue of the 'conduct of litigation'. The LSA identifies the conduct of litigation as being a reserved legal activity. Advocacy is also a reserved legal activity under the Act. *Mazur* held that unauthorised individuals cannot conduct litigation even if supervised by an authorised individual. However, the LSA has different provisions when it comes to advocacy. In particular, Schedule 3 of the LSA lists various exempt persons (meaning individuals who can, in certain circumstances, undertake advocacy) including:

> "(7) The person is exempt if —
>
> (a) the person is an individual whose work includes assisting in the conduct of litigation,
>
> (b) the person is assisting in the conduct of litigation —
>
> (i) under instructions given (either generally or in relation to the proceedings) by an individual to whom sub-paragraph (8) applies, and
>
> (ii) under the supervision of that individual, and
>
> (c) the proceedings are not reserved family proceedings and are being heard in chambers —
>
> (i) in the High Court or county court, or
>
> (ii) in the family court by a judge who is not, or by two or more judges at least one of whom is not, within section 31C(1)(y) of the Matrimonial and Family Proceedings Act 1984 (lay justices)."

Therefore, subject to the various requirements being met, an unauthorised fee earner can undertake advocacy in chambers under supervision from an authorised fee earner.

The use of the phrase 'in chambers' is unfortunate, and has caused confusion in the past, even for some members of the judiciary. Part of the problem stems from the fact that the term is not defined within the LSA. The term 'in chambers' should not be confused with 'in private': Most hearings that are 'in chambers' are also open to the public (even if it is sometimes necessary to get past locked doors to get to the hearing room). Classic examples of hearings being 'in chambers' would include CMCs, interim applications and detailed assessment hearings.

However, there are two issues with the wording of the exemption that are worth considering further. There do not appear to be any reported decisions on how the relevant wording should be interpreted.

Firstly, it is a requirement that the unauthorised individual is 'assisting in the conduct of litigation'. What does this mean? Is it sufficient that they are undertaking the advocacy, or is something more required? Is the assistance a prerequisite to then be permitted to undertake the advocacy? For example, if an unauthorised fee earner is instructed to paginate a hearing bundle and attend the hearing, does the act of paginating the bundle constitute 'assisting in the conduct of litigation', thus creating a doorway to being able to undertake the advocacy? If the same fee earner is only instructed to attend the hearing, have they failed to overcome the initial part of the test? It would be an extremely odd outcome if that is the correct interpretation (with a preliminary act, however minor, constituting the 'assisting'), but that is how it reads on a literal reading.

Secondly, the assistance must be 'under the supervision of that individual'. What form must this 'supervision' take in the context of advocacy? It cannot have been the intention that there is a requirement for the authorised individual giving the instructions to physically attend the hearing to supervise what the unauthorised fee earner is saying in court. On the other hand, it must mean something. If, for example, a team leader in a personal injury department, who is themselves an authorised person, instructs an unauthorised fee earner in their department to attend a CMC, this would presumably satisfy the requirement of supervision in their role as team leader. However, what about instructing an unauthorised fee earner in a separate advocacy department? How would the supervision be evidenced? Equally, is it possible to instruct an external advocacy provider (of unauthorised staff) to undertake the advocacy and still be able to establish 'supervision'?

Neither of these issues arise because of *Mazur*. They are unresolved issues embedded in the LSA.

What About Costs Recovery?

Let us assume that the worst has come to the worst and all work undertaken on a case was performed by an unauthorised fee earner. Where does that leave the issue of costs recovery in light of Mazur?

Firstly, as mentioned above, no step that is taken prior to the issue or commencement of proceedings can amount to the conduct of litigation. As such, there should be no difficulty recovering pre-issue work, even when undertaken entirely by an unauthorised fee earner.

What about post-issue work? *Mazur* held that it was unlawful under the LSA for an unauthorised individual to have conduct of litigation (and with it also, potentially, being a criminal offence and contempt of court). It is therefore difficult to see how a court would permit recovery of costs for work that had been conducted unlawfully. Although not entirely on all fours, it is certainly very similar to the situation of a retainer (most often a Conditional Fee Agreement or Damages Based Agreement) being held to be unlawful. Costs cannot be recovered pursuant to that unlawful agreement. An alternative claim on a *quantum meruit* basis would

be bound to fail (see *Glaser & Anor v Atay* [2024] EWCA Civ 1111). It may well be the case that, once a court has concluded that an unauthorised individual has had conduct of the litigation, all post-issue costs would be disallowed on the basis that everything was tainted by unlawfulness.

The alternative approach would be for a court to identify only those specific items of work that amount to the conduct of litigation. For example, the giving of legal advice, even in the context of legal proceedings, would not, alone, usually be treated as the conduct of litigation (see *Baxter*). Similarly, correspondence with another party to the proceedings alone would not usually be treated as the conduct of litigation (see *Agassi*). It may the case that a court would allow costs recovery of the specific items of work that did not amount to the conduct of litigation and disallow only those specific items of work that clearly did amount to the conduct of litigation (e.g. the issuing of proceedings).

However, extreme caution is needed here. It would be a mistake to take the approach of saying that step A is not the conduct of litigation, step B is not the conduct of litigation and step C is not the conduct of litigation and, as such, it is permissible to undertake steps A, B and C without falling foul of *Mazur*. As mentioned above, this is because of *Baxter*:

> "the court should look at the entirety of the activities undertaken by the [unauthorised individual] to assist their client and then decide whether, taken in the round, they amount to the conduct of litigation."

It may be the case that a court would conclude that once the threshold has been reached where the unauthorised fee earner is found to have had overall conduct of the litigation, it is the entirety of the activities that are tainted by unlawfulness, and all such costs should be disallowed.

What about Fixed Recoverable Costs? It is clear that the indemnity principle does not apply to FRC (see *Butt v Nizami* [2006] EWHC 159 (QB)). If the indemnity principle does not apply, and it is therefore irrelevant from a between-the-parties perspective as to whether there is an unlawful retainer in place (e.g. an unenforceable CFA), it is easy to see that a court may conclude that, for the purposes of between-the-parties costs recovery, it is irrelevant whether some, or all, of the work was undertaken by an unauthorised fee earner. The FRC are fixed by rules of court and are recoverable regardless of who undertook the work. However, it is possible to envisage alterative arguments.

Not only does the *Mazur* issue open the way for opposing parties to challenge between-the-parties costs recovery, but it produces an equal opportunity for disgruntled clients to challenge their solicitors' fees. To the extent to which this is done in the context of FRC work, even if costs can be recovered from the opponent, those costs belong to the client, not the solicitors. It may be that the solicitors have to account to their client for any FRC recovered.

What About Chartered Legal Executives?

Chartered Legal Executives are one group that have been significantly impacted by *Mazur*.

Not all Charted Legal Executives are created equally. Those who now qualify via the CILEX Professional Qualification acquire the right to conduct litigation as part of that qualification process. For those who became Charted Legal Executives through earlier qualification processes, they need to have obtained a specific right to conduct litigation separately from their basic qualification. There are three routes available – by assessment, by portfolio, or by training and assessment. It appears that a large proportion of Charted Legal Executives currently do not have the necessary authorisation to conduct litigation. This has come as a shock to many who believed they were able to conduct litigation by virtue of working for regulated firms of solicitors. It

means that, in the same way as for completely unqualified paralegals, these Chartered Legal Executives cannot have their own caseloads (even though, previously, some not only had their own caseloads but headed up whole litigation departments).

How To Avoid Problems

What steps should law firms take to ensure they do not fall foul of *Mazur*?

Obviously, the starting point is that all litigated cases must be run by an authorised fee earner. Unauthorised fee earners can assist but cannot conduct the litigation themselves, even under supervision.

It is infinitely preferrable to avoid a challenge arising (whether from the courts, opponents, regulators or disgruntled clients), rather than hoping you can successfully ride out a challenge.

Potential red lights will include:

- Unauthorised fee earners have signed court documents.
- Unauthorised fee earners have filed/served documents.
- All work claimed within a statement/bill of costs is by unauthorised fee earners.
- Only minimal supervisory work by an authorised fee earner is claimed in a statement/bill of costs, with all other work having been undertaken by unauthorised fee earners.
- An unauthorised fee earner is named as the person with conduct of the case in the client care/retainer letter.
- Key correspondence with the other side is by an unauthorised fee earner.

It may be that *some* of these steps can properly be undertaken by unauthorised fee earners (in their role as assisting an authorised fee earner conduct the litigation) but these are all things that will arouse suspicion as to who is really conducting the litigation.

What can be done to remedy problems on existing cases? There is almost certainly nothing that can be done on cases that have already settled, beyond ensuring that any formal steps being taken in relation to costs disputes are taken by an authorised fee earner. In relation to ongoing matters:

- Update client care letters so that any named fee earner with conduct is an authorised fee earner.
- Ensure that any future decisions in relation to litigation (particularly key decisions about case strategy, settlement, and procedural steps) are made by authorised fee earners and that this is properly evidenced by file notes.
- Ensure only authorised fee earners sign court documents.
- Ensure only authorised fee earners file/serve documents.
- Ensure key correspondence with the other side is by an authorised fee earner.

What about where key documents (e.g. the statement of truth on a claim form) has been signed by an unauthorised fee earner? Should permission be sought to amend the document? Any such application will immediately alert the other side to the problem (if they were not already aware of it). Is it better to let ‘sleeping dogs lie’ and hope for the best? Unfortunately, there is no easy answer to this.

Will Settled Cases Be Reopened?

There have been a number of commentators suggesting that parties may start to reopen costs orders, or even judgments in the underlying litigation, in light of *Mazur*.

The arguments would presumably be either:

- the underlying claim/defence would have been struck out if it had been known that an unauthorised fee earner had unlawfully had conduct of the litigation; or
- the paying party would not have agreed costs, or the court would not have assessed (whether by summary or detailed assessment) costs, as they did if it had been known that an unauthorised fee earner had unlawfully had conduct of the litigation.

It is difficult to see that these arguments would have much traction.

The important point is that *Mazur* did not purport to create new law. It was doing no more than clarifying the correct interpretation of the LSA. It would always have been open to parties to take issue with unauthorised fee earners having conduct of litigation and/or seeking recovery of the costs of such work. The fact that parties historically did not take a good point (if that is what it is) would not be a reason to reopen settled litigation. Parties cannot argue ignorance of the law as a justification for having a second chance.

Will You Go to Prison?

How likely are you to be sent to prison in light of Mazur?

Section 14 of the LSA states:

> **"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."

The offence can be committed by both the unauthorised fee earner and their manager, even if their manager is authorised to undertake the reserved legal activity in question.

Conviction can lead to a prison sentence of up to two years and/or a fine. The LSA also states that a person who is guilty of an offence under subsection (1) is also guilty of contempt of court and may be punished accordingly.

Fortunately, there is a statutory defence at s.14(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."

This creates the unfortunate position whereby experienced lawyers may have to plead ignorance of the law in their defence. The statutory defence in s.14(2) is an exception to the general principle that ignorance of the law is no excuse.

How likely is it that a court would believe lawyers did not know, and could not reasonably have been expected to know, that unauthorised fee earners could not conduct litigation, even under the supervision of an authorised fee earner?

Some comfort might be taken from the fact that, in the case of *Mazur* itself, the SRA had written to the solicitors in question advising that the LSA permitted unauthorised individuals to conduct litigation where they were employed by a regulated firm.

CILEX has recently had to admit it gave out incorrect information on its website:

> "Why did a CILEX webpage say members could conduct litigation prior to 2023?
>
> As has been covered in the press, a page on the CILEX website said members employed in solicitor firms could conduct litigation and we are investigating how this happened."

If regulatory bodies have wrongly interpreted the LSA, it would perhaps not be a very high hurdle to overcome to persuade a court that a lawyer that does not specialise in regulatory matters could not be reasonably expected to know what regulatory specialists failed to appreciate.

In any event, it seems very possible that the courts would adopt a similar approach to the problem of lawyers referring to fictitious case law that had been produced by AI hallucinations. Although potentially amounting to contempt of court, such proceedings have not yet been brought against those lawyers by the courts. Rather, dire warnings have been issued to the profession that future repetitions may lead to severe sanctions. It may be that past *Mazur* failings will be overlooked with sanction reserved for those who ignore the lessons of *Mazur*. However, if that is correct, a lenient approach may not last very long post-*Mazur*.

Contact Us …

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