The Conduct of Litigation (Mazur & Anor v Charles Russell Speechlys LLP)

The conduct of litigation is a reserved legal activity. It is a criminal offence for unauthorised persons - even where they are employed by an authorised person or firm or are acting under the supervision of an authorised person – to conduct litigation.

This Loss Prevention Standard provides guidance on how individuals and firms can manage the risk of the Mazur case having implications for them.

Version: 1.1
Date: 10th November 2025

The Conduct of Litigation (Mazur & Anor v Charles Russell Speechlys LLP)

Relevant Law

The Legal Services Act 2007 ("LSA") makes it a criminal offence for a *"reserved legal activity"*, such as *"the conduct of litigation"*, to be carried on by anyone who is not either an *"authorised person"* or an *"exempt person"*[1]. Both employers and employees can commit and be liable for the offence[2].

Background Facts

Charles Russell Speechlys LLP ("CRS") acted as lawyers for Julia Mazur ("JM") and Jerome Stuart ("JS"). JM and JS did not pay CRS' bill of £54,000. CRS instructed Goldsmith Bowers Solicitors ("GBS") to recover the debt (the "Debt Claim").

The individual at GBS working on the Debt Claim on behalf of CRS was Peter Middleton ("PM"). PM was a 'Senior Litigation Executive' and held the title of 'Head of Litigation' at GBS. PM was not authorised within the meaning of the LSA.

JM and JS applied for directions and an order that GBS replace PM with a qualified solicitor. DDJ Campbell ordered a 3 month stay and ruled that the Debt Claim would be struck out unless GBS provided an explanation of the position. CRS made the necessary application.

CRS' Application - The First Instance Decision

Before the hearing of the application, GBS:

1. Replaced PM with Lisa Adkin ("LA"), a qualified solicitor; and
2. Self-reported to the SRA. The SRA decided not to investigate. On 2 December 2024, the SRA wrote that GBS' *"employees are permitted to undertake reserved legal activities due to section 21(3)* [of the LSA]" (the "Letter").

CRS' argument, supported by the Letter, was that:

1. PM was authorised by LSA section 21(3)(b) as an employee of an authorised body[3]; and / or
2. PM had been conducting litigation under the supervision of an authorised person (Robert Ashall ("RA")).

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[1] In the case of conducting litigation, a person guilty of the offence can also be held in contempt of court. Schedule 2(4)(1) of LSA defines the conduct of litigation 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"*.

[2] LSA sections 12 – 19.

[3] LSA section 21(3) defines *"regulated persons"* as persons authorised by a body to carry on a reserved legal activity and adds *"(b)persons who are not so authorised but are employees of a person who is so authorised"*.

JM and JS argued that the Letter wrongly interpreted LSA section 21(3) as changing who could carry out reserved legal activities rather than dealing with the remit of regulation - defining who could be regulated by the SRA.

HHJ Simpkiss agreed with CRS. He granted the application (although he ordered CRS to file an amended claim form and particulars of claim signed by an authorised person) and ordered JM and JS to pay nearly £11,000 in costs.

JM and JS appealed.

The Appeal

Sheldon J allowed JM and JS' appeal and quashed the costs order. His decision:

1. Concluded that persons conducting litigation must be authorised to do so or exempt. Being employed by an authorised person does not permit an unauthorised person to conduct litigation. LSA section 21(3)(b) defines the scope of persons who are regulated, it does not extend the definition or scope of who is authorised to conduct litigation.

   Accordingly, PM was not entitled to conduct litigation by virtue of being an employee of an authorised person (GBS)[4];

2. Made a distinction between:
   a. An unauthorised person supporting / assisting an authorised person in conducting litigation; and
   b. An unauthorised person conducting litigation under the supervision of an authorised person.

   The first is permitted. The second is not. Accordingly, PM was not entitled to conduct litigation by virtue of being supervised by RA[5];

3. Unfortunately, did not expressly set out a test to be applied in determining whether an unauthorised person was merely supporting or assisting an authorised person to conduct litigation or conducting it themselves under the supervision of an authorised person.

   Instead, Sheldon J stated he agreed with the submissions of the Law Society and the SRA[6] (see below). Sheldon J also did not reach a decision on whether PM was conducting litigation[7].

4. Implied that procedural irregularities could be corrected[8].

Commentary

The Significance of Mazur

The fallout from Mazur has been significant. The Legal Services Board ("LSB") has fast-tracked an application from CILEx Regulation to allow legal executives to obtain standalone litigation practice rights[9]. Guidance has been issued (see below).

[4] Paragraphs 48 – 51 and 60 – 63 of Mazur.
[5] Paragraphs 48 – 51 and 64 of Mazur.
[6] Paragraph 64 of Mazur.
[7] Paragraph 67 of Mazur.
[8] Paragraph 76 of Mazur.
[9] Previously legal executives could obtain this only with advocacy rights.

The LSB will be carrying out a regulatory review[10]. There have also been calls for the LSA to be amended or for further, more specific, guidance to be provided. The fallout is therefore likely to continue.

In our view, Mazur is not new law but has exposed that evolved practice and regulation may not have always reflected the formal legal position.

The first element of the decision – that being employed by an authorised person does not permit unauthorised persons to conduct litigation – was already clear from the LSA and from the SRA's Authorisation of Firms Rules[11]. It was therefore unfortunate that the SRA erroneously set out the position in the Letter (which it subsequently corrected in its Mazur submissions).

The second element – that unauthorised persons cannot conduct litigation under the supervision of an authorised person – was less clear from the LSA. There was, however, no provision in the LSA expressly permitting the conduct of litigation under the supervision of an authorised person unlike, for example, reserved instrument activities. It was clear from the SRA's November 2022 guidance "Effective Supervision"[12], which states that there is *"no provision for unauthorised people to carry out litigation under supervision. Therefore, 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"*.

The third element was some discussion of the correct test to be applied, although that clarification was provided via an approval of representations made by the Law Society and SRA, was heavily influenced by the principles in Baxter (see below) and was not applied to the facts in the case.

The fourth element – that procedural irregularities are capable of correction – was not explicit from Sheldon J's judgment, rather it was implicit from the decision he reached. It could have real practical significance as discussed below.

The impact on high-value, complex litigation, the characteristics of which (issues, sums at stake, recoverability of costs) typically require (or permit, at least commercially) conduct by authorised person/s, may be minimal.

It is the impact on higher-volume, lower-value litigation (for example lower-value personal injury claims, debt recovery and landlord and tenant claims) which is likely to be more keenly felt[13]. The characteristics of these claims and issues such as reforms designed to reduce the cost of litigation, have led firms to increase the use of (and responsibilities given to) unauthorised employees.

Mazur therefore presents an opportunity for firms and individuals providing litigation services to consider (or reconsider) the issues in the section below and in the checklist at the end of this note.

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[10] 20251028-Scope-Regulatory-review-of-advice-and-guidance-on-the-conduct-of-litigation.pdf

[11] Rule 5.3 states *"An authorised body may only carry on a reserved legal activity through a person who is entitled to do so"*. SRA | Authorisation of Firms Rules | Solicitors Regulation Authority

[12] SRA | Effective supervision | Solicitors Regulation Authority

[13] Commentators on Mazur have also raised concerns about the impact on legal executives and experienced (but unauthorised) paralegals and assistants. In terms of legal executives wishing to conduct litigation themselves, CILEx Regulation's solution is for them to obtain separate litigation practice rights – which can now be obtained separate to the previously attached advocacy rights.

The Position Following Mazur

Following Mazur, unauthorised persons conducting litigation on the basis that LSA section 21(3) permits them to do so will clearly commit the offence. At the other end of the spectrum, authorised persons conducting litigation alone or with other authorised persons clearly will not.

For cases in the middle where both authorised and unauthorised persons work on a case, there are 2 key elements to consider:

1. **What** activities are being carried on and do they potentially amount to the conduct of litigation, either individually or as a package?

Clearly, for there to be any issue, the activities carried on by the firm or individual in question must be or amount to the conduct of litigation. The issue of whether the activities carried on by PM in the Debt Claim amounted to the conduct of litigation was not in issue in Mazur.

It was, however, the issue in Baxter, described in the submissions in Mazur as *"the best up to date statement of the correct approach"*[14].

2. If the activities being carried on amount to (or potentially amount to) the conduct of litigation, **who**, as a matter of fact, is conducting that litigation – an authorised person being supported by an unauthorised person or an unauthorised person even if supervised?

This was the issue in Mazur.

What activities are being carried on?

In Baxter, Mrs Doble, a graduate member of CILEX, advised and assisted a landlord in a housing repossession claim.

In deciding that what Mrs Doble did amounted to the conduct of litigation but that she could avail herself of the LSA section 14(2) defence (see below), Cavanagh J first undertook a detailed analysis of the historic statutory regime and the cases that have interpreted it.

He then held that the appropriate test was one of *"fact and degree in every case"* - looking at *"the entirety of the activities undertaken"* (which Cavanagh J also described as the *"package of services"*) before deciding *"whether, taken in the round, they amount to the conduct of litigation"*, emphasising that substance should be prioritised over form.

[14] Paragraph 30 of Mazur and Baxter v Doble [2023] EWHC 486 (KB).

Helpfully, it is also possible to go through Cavanagh J's judgment and categorise activities:

Activities which, even in isolation, are likely to amount to the conduct of litigation	**Activities which, in isolation, do not amount to the conduct of litigation but which are relevant to the overall picture**	**Issues which focus on form over substance**
Taking all steps in relation to claim forms and particulars of claim (save for 'formalities' such as signature or use of letterhead).	All steps prior to the issue / commencement of proceedings (save for unusual circumstances such as injunctions). This is likely to include the drafting of a claim form and may also include drafting particulars of claim (when done pre-issue).	The function / act of serving documents (as distinct from legal responsibility for service). These have been described in the case law as *"administrative"* or *"mechanical"* functions.
Taking legal responsibility for service of pleadings.	The provision of legal advice, even if that advice relates to litigation procedure.	Who signs court forms / pleadings.
Preparing substantive instructions to an advocate and instructing an advocate.	Steps which, whilst formal in nature, are not taken in proceedings (for example, serving Section 8 and Section 21 notices in housing claims).	Use of letterhead.
Drafting witness statements.	Service of a notice of issue.	Who is on the court record.
Drafting application notices and preparing draft orders.		
Preparation of pleadings subsequent to the claim form / particulars of claim (save for 'formalities' such as signature or the act of filing).		
Drafting a case management summary for a costs and case management conference.		

Who is Conducting the Litigation?

As discussed above, Sheldon J did not expressly set out the test to be applied in cases where this is an issue. Instead, he approved the submissions of the Law Society and SRA. Those submissions were not identical, but in our view can be summarised as follows:

It will be *"a question of fact and degree"* in each case, with the key considerations being who:

- Is *"in control of"* the litigation;
- Has *"final responsibility"* for the litigation; and,
- Exercises *"final professional judgment"* in respect of it.

The key indicators *"may include"*:

- How *"important decisions in the case are taken"*;
- *"Who drafts or specifically approves formal documents"*;
- *"The degree of direction from the authorised person"*; and
- *"Evidence as to who is taking specific responsibility for formal steps"*.

In addition, it was made clear that *"those providing support* [should be] *properly directed and supervised"* and that *"Tasks may be delegated but conduct of the litigation may not"*[15].

Subsequent Guidance

On 2 October 2025, CILEx Regulation published "Interim Guidance"[16]. On 16 October 2025, the Law Society issued a practice note[17]. On 20 October 2025, the SRA published a "Hot Topic" article[18]. The Law Society practice note:

- Emphasises the central importance of responsibility and the exercise of professional judgment;
- Supports Baxter in that it suggests that all pre-action activities and "clerical or mechanical" tasks will not be conducting litigation;
- Supports the conclusion we reach below in relation to the likelihood of consequences in the underlying litigation (that such consequences are unlikely) and goes further, stating that litigators *"should be careful not to behave in a way that risks straying into improper use of satellite litigation to attempt to influence another party's behaviour or the progress of the litigation. The SRA may consider this to be misconduct"*;
- Potentially significantly, suggests that unauthorised persons can work to *"guides or protocols"* provided an authorised person is responsible for the matter overall, it is *"actively supervised"* and *"key decisions and formal steps in the proceedings are escalated to the authorised person, who exercises their professional judgement in relation to them"*;
- Gives examples of acceptable arrangements in civil, family and criminal contexts;
- Sets out practical steps for firms to take (which are reflective of our recommendations below); and
- Clarifies the forums to which the LSA applies.

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[15] The submissions of the Law Society and SRA are summarised by Sheldon J in paragraphs 25 – 42 of Mazur.

[16] Subsequently revised 3 times. Version 4 was released on 17 October 2025 (Revised-Interim-CRL-guidance-the-conduct-of-litigation-v4.pdf)

[17] Subsequently revised on 22 and 24 October 2025. Mazur and the conduct of litigation | The Law Society

[18] The status of this is unclear, but versions 2 and 3 of the Law Society guidance refer to it as "guidance"

However, it:

- Still leaves grey areas, noting that the question will be one *"of fact and degree in each case"*; and
- Undermines Baxter in that it suggests that drafting witness statements and instructing counsel will generally not be conducting litigation (unless the instructions to counsel *"impact steps in connection with the proceedings"*).

CILEx Regulation's interim guidance note:

- Repeats that the matter *"is a question of fact and degree in each case"*;
- Reiterates Baxter and the Law Society guidance in giving examples of what activities are unlikely to amount to conducting litigation;
- Also reiterates that the key issue is *"responsibility for formal and important steps and decisions"*;
- Contradicts the Law Society guidance by (incorrectly, in our view) including employment tribunals within the scope of the restrictions; and
- Cautions against use of *"an informal or artificial arrangement to try to get round the requirement to have litigation conducted by an authorised person"*.

The SRA 'guidance':

- Again, states that the issue will be *"fact dependent"*;
- Again, identifies:
  - Responsibility for litigation steps; and
  - Judgment (in respect of how the matter is being progressed and its *"direction"*)

  as being the key factors.
- Recommends firms *"check the scope"* of employees' authorisations and *"consider the nature of their supervision of arrangements by which individuals support litigation"*; and
- Recommends firms keep records of their decision-making process.

Summary

It is unfortunate that the profession still does not have the *"clear and specific guidance"* the Law Society has previously called for in terms of what unauthorised persons can and cannot do and what authorised persons should and should not do. That is particularly the case in the context of what is a criminal offence.

It is also unfortunate that some of the guidance contradicts other guidance and the case law in some regards.

However, in our view and until clear and specific guidance is provided (if it is), the following can be distilled. Firms:

- Should look at the activities being performed and categorise those activities, but be aware that that is unlikely to give a complete picture because:
  - There is no definitive statement of what activities do or do not constitute the conduct of litigation. The case law and guidance (and even the Civil Procedure Rules) is unclear and, in some ways, contradictory; and
  - The question is one of "fact and degree" in any event. An activity that constitutes the conduct of litigation in one case may not in another.

  It is, however, clear that the term conduct of litigation will be interpreted narrowly.

- Should focus on ensuring that, for each litigated matter, an authorised person:
  - Has ultimate responsibility for litigation matters overall and for formal steps in the litigation;
  - Exercises professional judgment in respect of strategy, approach and formal documents; and
  - Has final input on, and approval of, formal documents.

Managing the risk

So how can firms, teams within firms and individuals manage the risk of being found to be operating in breach of the LSA in relation to their provision of litigation services?

Potential impacts

The potential implications of Mazur mean that it should not be ignored:

- A potential increase in interim applications. Mazur itself arose out of an interim application by JM and JS. More parties may seek to strike out claims or gain other tactical advantages if they consider the person acting on behalf of their opponent is conducting the litigation and is not authorised to do so. This could be particularly problematic if the claim was issued close to a limitation deadline which may have subsequently passed. Firms may consider it necessary to make relief from sanctions applications to seek to regularise the position. If this eventuates, there will be additional work (and costs) and increased burdens on the courts. That said, the overriding theme from the case law appears to be that procedural implications are unlikely given that the offence is committed by the representatives, not their clients – and implications such as a strike out would therefore be 'punishing' the innocent. The cases suggest that criminal sanctions, contempt committals or regulatory action are the correct avenue of recourse. As stated above, the Law Society's practice note reiterates this and discourages litigators from using potential breaches as a litigation tactic;
- Arguments on, or implications for, costs. There are already reports of parties challenging the recoverability of costs where those costs were incurred by an unauthorised person. Equally, parties may seek to use Mazur to justify higher costs or some elements of what might otherwise be viewed as duplicative costs;
- Criminal sanctions for both individuals and firms;
- Risk of being found in contempt of court for both individuals and firms;
- Possible regulatory implications. Being charged with this offence would trigger an automatic obligation to report to the SRA. A reasonable belief that a potential or actual serious breach of regulatory arrangements has or may have occurred would also trigger the obligation[19];
- Reputational issues; and,
- Possible insurance implications. Most solicitors' insurance policies contain a condition requiring the firm to notify any circumstances that may give rise to a claim against the firm.

We consider firms should carry out the steps outlined below and in the attached checklist to seek to mitigate the impact of any offences which have already occurred or are occurring and to manage the risk of being guilty of the offence in future.

[19] CILEx Regulation has stated that its members are not required to self-report if they practiced in line with pre-Mazur guidance and there have been calls for an "amnesty" type announcement as a way of dealing with Mazur.

In addition, it is important to note that making changes of form (such as changing who signs court documents or takes certain steps) may be prudent but is unlikely to be sufficient given the focus on substance rather than form.

Audit of Current Files

Assessing whether any current litigation matters are vulnerable to a finding that an offence has been or is being committed in how they are being conducted is an important first step in (a) informing the extent of any issues presented by Mazur (b) seeking to respond to any current or existing offences and (c) identifying any changes required to manage the risk of offences being committed in future.

The questions in the first section of the checklist below ought to assist in assessing that vulnerability.

In relation to the issue of decision-making (question 5(e) in the checklist below), the authorities focus more on activities than this less tangible issue. However, it is tolerably clear that a court would expect firms and individuals to ensure that responsibility for any final decisions in the litigation rests with an authorised person, and this should therefore be the approach. That is not to say that unauthorised persons cannot have an important role and be involved in decision-making (indeed, that is a very important aspect of obtaining experience and learning). We think it is very unlikely that a court would take issue with a case where unauthorised persons are involved in decision-making (perhaps by presenting their views and putting forward suggestions), provided that an authorised person makes (and takes responsibility for) the final decision made – even if that is to adopt the suggestion of an unauthorised person.

In relation to question 5(f) in the checklist below, again we consider it is likely to be acceptable to a court for unauthorised persons to participate in the drafting of important documents (again, this is an important part of learning and development). However, firms and individuals should ensure that unauthorised person/s receive proper direction before doing so and that there are policies and procedures in place (and which are followed) for authorised persons to review and approve drafted documents before they are finalised and sent externally.

Even with such procedures in place, this may ultimately be a case of "degree" – a finding that an offence has been committed is more likely depending on the type of document, the more / greater proportion of important documents are drafted by unauthorised persons or the fewer reviews and approvals that occur (or the less detailed a review is).

As with all the risk management guidance in this note, the audit should be recorded and retained.

Regularise the Position as it Stands

If the audit reveals any potential problems, you should consider what steps should be taken to mitigate them. A list of potential considerations is within the second section of the checklist below.

HHJ Simpkiss' initial decision in Mazur (that breaches are capable of correction) was confirmed as *"right"* by Sheldon J. In Mazur, formal documents were amended and PM was replaced by LA, but neither the case nor subsequent guidance confirms which step corrected the position (or if it was both in concert).

Accordingly, to the extent the audit identifies issues, it would be good practice to first take steps to address those issues in the short-term and subsequently ensure any changes resulting from the general review suggested below are implemented both in relation to existing and future cases.

As indicated above, the cases and Law Society practice note make it clear that ramifications in the proceedings in question are unlikely – as that would penalise the (usually innocent) client.

There may, however, be costs implications – which clients would argue ought to remain with the firm along similar lines of reasoning.

It also seems clear to us that retrospective action (such as correcting court documents or replacing unauthorised conductors of litigation with authorised ones) may be necessary from a civil procedure perspective but would not be a defence to any criminal proceeding or regulatory action.

General Review of Litigation Practices

Whilst the file audit may well inform this process and perhaps highlight where there are specific issues, we consider it would be prudent for firms to also carry out a thorough review of the framework within which its litigation services are provided.

The focus of this review should be on the substantive elements of how the firm conducts litigation – the cases highlight that making superficial changes of form will not make otherwise non-compliant practices compliant.

The review should include consideration of:

Policies, Procedures and Precedents. The most relevant policies and procedures are likely to be the firm's supervision policy and any litigation manual the firm has.

Whilst discussing a supervision policy in the context of a case which states conduct of litigation by unauthorised persons under supervision is not permitted may seem strange, good supervision practices should go beyond supervision and reflect authorised persons conducting litigation.

A good supervision policy will:

- Reflect and be compliant with the SRA's guidance "Effective Supervision"[20];
- Highlight that the LSA makes it a criminal offence to conduct litigation, even under supervision, unless authorised or exempt;
- Identify the key stages at which an authorised person must be involved, for example, when the decision to issue the claim is made;
- Include clear requirements on authorised persons who are also supervisors. In light of Mazur, focus should be on ensuring that supervisors of litigation matters do more than just supervise and that the requirements on them go beyond supervision and into conduct. It should ensure that authorised persons are in control of litigation matters including properly reviewing and approving formal documents if drafted by others, being the ultimate decision-makers even if supported by others, giving clear and sufficient directions and having final responsibility for them;

[20] See note 12.

- Include clear requirements on supervisees. Supervision should not be a one-way street. It is just as important for supervisees to be clear about when their obligation to seek the involvement of their supervisor arises as it is for supervisors to be clear about their obligations. In respect of litigation matters, the policy should set out that supervisees should ensure that formal documents drafted by them are reviewed and approved by an authorised person, that they can be involved in the decision-making process but not be the final decision-maker, and should ensure they receive clear and sufficient instructions when tasks are delegated;
- Facilitate discussions between fee earners;
- Take into account that, in large teams or on large cases, there may be more than one level of supervision and that not all supervisors will necessarily be authorised persons. Where there is more than one level of supervision, authorised persons must ensure that the team structure is organised such that they still have control of, and final responsibility for the litigation; and,
- Ideally be in writing, regularly reviewed, regularly communicated and have a mechanism for being monitored for compliance.

A particularly thorough supervision policy could refer to the detail in the litigation manual relating to particular activities and highlight that obligations may differ depending on the activity being carried out.

A good litigation manual should:
- Again, highlight that the LSA makes it a criminal offence to conduct litigation, even under supervision, unless authorised or exempt;
- Require each litigation matter to be controlled by an identified, authorised person;
- Set out the decision-making process for all strategic and case management decisions – ensuring that the final decision rests with an authorised person;
- Ensure that responsibility for formal steps and the litigation overall rests with an authorised person; and,
- Detail the document drafting and approval process.

The best litigation manuals will 'activity map' the steps in litigation, make it clear which of those steps meet the LSA statutory definition of conduct of litigation and set out the implications of that in terms of who can do what in relation to each step. Alternatively, this could be achieved by setting the information out in workflows. The case law makes it clear that different activities require different approaches.

In terms of precedents, as stated above, the case law is clear that the test will focus on substance, not form (for example, it will be insufficient for letters to be signed by an authorised person if that, in reality, is the extent of their involvement).

However, precedents can assist in risk management if they:
- Include document control sheets, particularly for complex documents, showing who has seen, amended and approved documents and how and when they did so;
- Reflect and emphasise the proper arrangements of how the firm conducts litigation. For example:
  - Engagement letters should set out who will be involved in the case, what their role will be, what they can and cannot do and their contact details;
  - Documents and covering letters should indicate who is an appropriate signatory and who is able to finalise and send them;

- If the firm determines that it is appropriate for an unauthorised person to sign and send a document or letter (once approved), it may be appropriate for correspondence to specifically highlight that, in taking the step concerned, the unauthorised person is supporting an authorised person (and who that authorised person is).

It is worth noting that the Law Society practice note envisaged guides and protocols being used, provided that the matters had an authorised person with responsibility for matters being run using guides and protocols and that person actively supervised the matter and had key decisions and formal steps escalated to them. We consider it would be necessary for an authorised person to have drafted any guides and protocols in use.

The firm's case management system ("CMS"). It may be that the firm's CMS either already can help firms ensure litigation is only conducted in a manner compliant with the LSA or could if amended or replaced. For example, CMSs could assist by:

- Clearly identifying responsibilities and allocating control;
- Generating workflows which ensure the proper and substantive involvement of authorised persons at all stages;
- Generating appropriate reminders and tasks for both authorised and unauthorised persons;
- Ensuring authorised persons can view all live work;
- Properly generating precedent documents (see above);
- Preventing documents being sent externally without prompts relating to reviews / approvals or if they are not compliant;
- Providing for case reviews and discussions at which instructions from authorised persons are given; and,
- Providing for case reviews and discussions at which decisions in relation to the litigation are discussed and determined (and recording how).

Finally, CMSs are likely to be useful in recording evidence.

The Firm's Time Recording System and Policy. The time recording system may well be a part of, or be compatible with, the CMS. Regardless, the time recording system can assist by including a requirement for narratives to be fully recorded and retained and for tasks undertaken (or time recorded) to be clearly identifiable. The system may well also record the total time taken by authorised and unauthorised persons (see below).

The firm's time recording policy should include a requirement for narratives to be fully recorded and reflect that supervision and delegation is identifiable, recordable and recorded. It should also provide for case discussions between those working on a matter be recorded and reflect that all time spent on a matter is recorded – even if it is recorded as 'not chargeable' or revisited at the time of billing.

Objective-setting / Incentivisation. Some firms find that an effective method of reinforcing behaviours is via objective-setting or incentivisation.

Firms may consider that, for authorised persons, ensuring they conduct all files in their name should be an objective and / or incentivised. In addition, or alternatively, time spent properly directing unauthorised persons, approving documents, holding reviews where case decisions are taken and otherwise ensuring they are conducting the litigation should be of equal value to the usual lawyer time / billing targets (even if not ultimately billed to the client or recovered).

Training Regime. Given the attention Mazur has received, it may be appropriate to provide one-off training on the case and its implications.

Longer-term, the firm's training regime should:

- Highlight and explain the provisions of the LSA and the regulatory guidance discussed in this LPS;
- Explain what resources / policies the firm has in order to ensure compliance with the LSA (internally and externally);
- Clarify the roles of authorised persons and their obligations;
- Clarify the roles of unauthorised persons and what they cannot do;

Training / materials should be provided when new employees are inducted and there should be provision for it to be refreshed annually.

Litigation Team Structures and Role Descriptions. These should reflect the principles in this LPS and the obligations of (and restrictions on) each role. Both internal documents (such as role descriptions) and external (such as website profiles) could be amended.

Long-term Compliance and Evidence of Compliance

Mazur should not represent a one-time review. It will be important for the firm to ensure long-term compliance with the LSA. Positive practices could include:

- Ensuring all policies and procedures are regularly reviewed;
- Compliance is monitored via mechanisms such as:
  - File auditing;
  - Peer reviews; and,
  - Billing / time recording systems (for example, cases where a defined percentage of time has been recorded by an unauthorised person could be highlighted for a compliance review) and,
- The firm having a means for employees to report concerns (anonymously if necessary).

It is generally good practice to have evidence of everything the firm has in place. Not only do the cases highlight this, but good evidence that only the firm's authorised persons conduct litigation is essential to potentially preventing issues occurring in the first place. If issues do arise (whether they be within an ongoing case, a claim against the firm, a committal or a regulatory investigation) evidence will be critical to prove compliance (or seek to rely on a statutory defence).

Statutory Defences

Finally, the LSA contains potential defences to the offence in section 14(2) (for individuals) and 16 (for firms).

The section 14 defence was successfully relied upon by Mrs Doble in Baxter. However, she had previously been the subject of disciplinary proceedings and had changed her practice following those proceedings in a manner which satisfied her regulator. She had also obtained specialist advice. Finally, the uncertainty of the case law was a further factor which influenced the judge in that case. It is arguable that Baxter and Mazur clarify much of that uncertainty. We anticipate that cases where the section 14 defence can be relied upon are likely to be relatively rare.

LSA section 16(4) provides firms with a defence if the firm can show it *"took all reasonable precautions and exercised all due diligence to avoid committing the defence"*. Firms doing so (and following the guidance in this LPS) may be able to avail themselves of this defence. A statutory defence is, however, a last resort.

Is Mazur Relevant to Other Reserved Legal Activities?

Mazur was a decision in relation to the reserved legal activity of the conduct of litigation. We do not consider anything in it was intended to be of broader application and consider it is unlikely to be capable of being of general application to other reserved legal activities given the different statutory wording applicable to each (for example, other reserved activities are capable of being carried out under supervision).

Checklist

A **Conducting Litigation Checklist** is presented in Appendix 1 which can be tailored to your own organisation.

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Additional Information

Relevant Aviva Loss Prevention Standards include:

- **Legal Professional Privilege**
- **Professional Indemnity - External Accreditations for Law Firms**

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Email us at riskadvice@aviva.com or call 0345 366 6666.*

*The cost of calls to 03 prefixed numbers are charged at national call rates (charges may vary dependent on your network provider) and are usually included in inclusive minute plans from landlines and mobiles. For our joint protection telephone calls may be recorded and/or monitored.

Appendix 1 – Conducting Litigation Checklist

Location	
Date	
Completed by (name and signature)	

	Case Audit	Y/N	Comments
1.	Do we have persons who are either unauthorised persons (for example, trainee solicitors, paralegals, pupil barristers or legal executives who do not hold separate litigation rights) or not exempt persons working in any team where litigation (in any court) is conducted? *If no, Mazur is unlikely to be relevant. If yes, consideration should be given to the other questions in this section.*		
2.	What activities are being carried on and by whom?		
3.	Where activities have been identified as being carried on by unauthorised persons in (2) above, are those activities capable of amounting to the conduct of litigation – either individually or as a package and considering the substance of those activities, not the form? The answer to this will be fact-specific, but there is guidance in the Baxter case – summarised in the "Commentary" section of this LPS. *If yes, consideration should be given to the other questions in this section.*		
4.	Have you previously understood LSA section 21(3)(b) to permit unauthorised persons to conduct litigation on the basis that the firm is authorised? This understanding may have been an internal position or the firm may have received guidance from the SRA similar to that provided to GBS in Mazur. Either way, Mazur makes it clear that LSA section 21(3)(b) does not permit unauthorised persons to conduct litigation on the basis that the firm is authorised. *If the answer here is yes and any of your litigation services were provided accordingly, consideration should still be given to question 5 – but it is more likely than not that you will have cases to which 5(b) applies or that unauthorised persons have conducted litigation generally. In either case, there is a risk that the offence has been committed. If no, consideration should be given to question 5.*		

	Case Audit Cont'd	Y/N	Comments
5.	Where the answer to question 3 is yes, are those activities carried out (a) in support of an authorised person conducting litigation or (b) by an unauthorised person conducting litigation under the supervision of an authorised person?		
	The following questions are relevant. As a matter of fact:		
5a.	Is an authorised person in control of the litigation as a whole?		
5b.	Is an authorised person exercising the final professional judgment in respect of it?		
5c.	Is an authorised person ultimately responsible for the litigation?		
5d.	Is there evidence as to who is taking responsibility for all formal steps?		
5e.	How are important decisions taken?		
5f1.	Who drafts important documents?		
5f2.	Do unauthorised persons drafting documents receive proper direction and supervision before doing so?		
5f3.	Do authorised persons review and approve those documents before they are finalised and sent externally (i.e. to the other party or the court – travelling drafts between firm and client may not need to each be individually reviewed and approved)		
5g.	Do unauthorised persons receive proper direction and supervision from authorised persons at all times?		
5h.	Where delegation occurs, is this of tasks required to be undertaken for the running of the case and not control of, responsibility for and judgment in respect of it?		
	5(a) – (d), 5(g) and 5(h) should all be capable of being answered in the affirmative. If not, there is a risk that the offence is being committed.		
	The issues at 5(e) and (f) are discussed in the final section of this LPS above.		
	It would also be good practice to ensure there is evidence to support all answers, in the event of challenge. Evidence is discussed in the LPS above.		

	Case Audit Con'td	Y/N	Comments
6.	On the other hand, are there any cases we are involved in where we consider the other side's representatives may be committing the offence? If so, are there any steps we could take in our client's best interests?		

	Regularisation of Current (and Potentially Closed) Files	Y/N	Comments
If the case audit identifies issues on files, consider the following:			
7.	What immediate steps need to be taken to mitigate and rectify any identified issues on files? *For example, in Mazur, GBS replaced PM with an authorised person and amended court documents.*		
8.	If opponents begin to raise issues in the litigation, what is our response to those issues?		
9.	Do the issues identified require proactive steps to regularise the position, such as an application for relief? If so, how will those steps be resourced?		
10.	Do we need to inform our clients of any issues identified? Do any conflict-of-interest issues arise?		
11.	Do we need to report to the regulator? *A reasonable belief that a potential or actual serious breach of regulatory arrangements has or may have occurred would trigger this obligation.*		
12.	Do we need to notify our professional indemnity insurers? *You should have regard to the terms of your insurance policy.*		

	Review of Litigation Practices	Y/N	Comments
13.	Does the firm's supervision policy include clear requirements on supervisors?		
14.	Does the firm's supervision policy include clear requirements on supervisees?		
15	Does the firm's supervision policy facilitate discussions between fee earners working together on cases?		
16.	Is the firm's supervision policy in writing, regularly reviewed and is compliance with it monitored (and if so, how)?		
17.	Does the firm's litigation manual require each litigation matter to be controlled by an authorised person?		
18.	Does the firm's litigation manual set out the decision-making process?		
19.	Does the firm's litigation manual ensure responsibility for formal steps and the litigation overall rests with an authorised person?		
20.	Does the firm's litigation manual include 'activity maps' or 'workflows' (or other format) highlighting which steps in litigation meet the LSA statutory definition of the conduct of litigation and then set out the implications of that in terms of who can do what?		
21.	Does the firm's case management system support litigation being conducted in a manner that is compliant with the LSA? If so, how? Could it be improved and, if so, how? If not, could and should it be replaced or would alternatives to replacement be appropriate?		
22.	Does the firm's time recording system adequately differentiate tasks and allow for full narrative explanations to be provided and retained? Does it record overall time by fee earner type?		

	Review of Litigation Practices	Y/N	Comments
23.	Would it be beneficial to incentivise behaviours compliant with the LSA via objective-setting, bonus incentivisation or other method?		
24.	Does the firm have a training regime that reflects the importance of compliance with the LSA, ensures our employees understand the obligations of and limitations on their roles and ensures employees know where to find internal and external guidance?		
25.	Is that training provided on a one-off basis when developments occur, provided to new employees on indication and then refreshed annually?		
26.	Are the firm's litigation team structures and role descriptions reflective of the requirements of the LSA?		

	Other Considerations	Y/N	Comments
27.	Have we provided for the firm to continue to consider ongoing compliance with the LSA?		
28.	How will compliance with the LSA be monitored?		
29.	Do we retain evidence of all the steps the firm takes to ensure compliance with the LSA?		
30	Additional Comments:		

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10th November 2025

Version 1.1

ARMSGI3462025