The 'Mazur' judgment - What does it mean for criminal practitioners?

The judgment in Mazur & Anor v Charles Russell Speechlys LLP [2025] EWHC 2341 (KB) has already been mentioned in the Monday Message.

This is an important decision on the application of the Legal Services Act 2007 and who is entitled to 'conduct litigation'. As some commentators have said, the Mazur decision has not changed the law but it has highlighted the fact that many in the legal professions had misunderstood or misapplied the statutory framework.

The decision confirms that a non-authorised person cannot 'conduct litigation' even if they are acting under the supervision of an authorised person. That affects the way in which a number of Solicitors' firms have organised responsibility for their cases.

The decision has also shone a spotlight on the issue of what amounts to conduct of litigation. Professional bodies including the SRA, Law Society, CILEX, CILEX Regulation and BSB are still considering what action to take in light of the decision, as is the government.

Criminal barristers need to be aware of four things:

(1) An authorised litigator must be involved in all formal steps in a criminal case, such as lodging an indictment or making an application. Work can be done by a non-authorised employee, but the authorised litigator may have to approve decisions and/or approve draft documents.

(2) The distinction between advocate and litigator means that there are limits on what barristers are authorised to do when instructed as an advocate in a criminal case. The decision of the Court of Appeal in R (City of York) v AUH and others [2023] EWCA Crim 6 received less publicity than Mazur but more directly highlights those limitations.

(3) There now calls for urgent legislative reform. Practitioners should be alert to more fundamental changes in the coming months.

(4) CILEX are now taking steps to obtain authorisation for its members, but that will not alter the position of other non-authorised staff working in the Criminal Justice System.

Professional Guidance for the Bar

The purpose of this document is to raise awareness of the issues and to discuss some of the practical implications. It is not intended to provide legal advice.

Relevant professional guidance was published by the BSB in 2024. That guidance should be treated as **essential reading** for all barristers.

The BSB's own response to the Mazur decision reiterates that this guidance still applies. It states:

> *"We are aware of the recent judgment 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'. ... We are considering whether any further guidance would be helpful, in consultation with other legal regulators and the Bar Council."*

The legal framework

The prohibitions on the conduct of litigation by non-authorised persons are contained in primary legislation. Part 3 of the Legal Services Act 2007 makes provision about 'reserved legal activities', which include both the conduct of litigation and advocacy (defined as 'the exercise of rights of audience'). These are separate activities, and the formal roles of advocate and the litigator are different.

Section 14 makes it a criminal offence to carry on a reserved legal activity unless entitled. Schedule 2 contains relevant definitions.

The Act defines 'conduct of litigation' in very general terms and this has given rise to difficulties both for the Courts and for the professions. Sch 2, Para 4(1) simply provides this:

> *"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)."*

What this may mean in the context of criminal cases is discussed below.

The Case Law

The meaning of conduct of litigation has been considered in a number of reported cases. Only two of these (Media Protection Services and the City of York case) concerns criminal proceedings.

Agassi v Robinson [2005] EWCA Civ 1507 concerned work done by a tax specialist who had instructed counsel in High Court proceedings under the licensed access scheme. The Court of Appeal held that some (but not all) of the work done had involved the conduct of litigation. The Court gave guidance in very general terms, holding that taking a 'formal step' in court proceedings can only be done by an authorised litigator, but non-authorised persons are entitled to carry out clerical tasks, provide administrative support and give advice. The decision leaves open the question of what amounts to a formal step.

Media Protection Services Ltd v Crawford [2012] EWHC 2373 (Admin) concerned a private prosecution for copyright offences brought by a private company acting on behalf of the Premier League against the licensee of a public house. The information had been laid by a director of the company. The Divisional Court held that the laying of the information on behalf of a fee-paying client amounted to the conduct of litigation for the purposes of the 2007 Act. The Court held that this was a fundamental breach and the procedings were a nullity.

In Ndole Assets Ltd v Designer M&E Services UK Limited [2018] EWCA Civ 2685 the Court of Appeal held that serving a Claim Form and Particulars of Claim falls within the definition of the conduct of litigation because those actions are clearly a formal step in the proceedings. However, the Court drew a distinction between the person who assumes responsibility for the service of proceedings (who must be authorised) and someone who merely performs the mechanical task of sending or delivering the documents to the recipient (who need not be authorised).

In Baxter v Doble [2023] EWHC 486 (KB) Cavanagh J held that a legal executive had conducted litigation by drafting a claim form and Particulars of Claim, preparing a supporting bundle of documents, sending them to the Court and paying the issue fee. The documents had been approved and signed by the client as if a litigant in person, but the Court held that the legal executive had breached the restrictions because she had assumed responsibility for the documents.

In R (City of York) v AUH and others [2023] EWCA Crim 6 the Court of Appeal had to consider the application of these principles to a criminal case on an appeal from a preliminary ruling. This was a prosecution brought by City of York Council on behalf of Regional Trading Standards. The proceedings had been commenced by a senior Trading Standards officer. The case was sent to the Crown Court, where leading and junior counsel were instructed by the officer to prosecute. The officer was authorised, under the Local Government Act 1972, to conduct proceedings on behalf of the Council before the Magistrates' Court, but not in the Crown Court. The Court of Appeal held that the

officer's conduct taken as a whole showed that the officer was conducting the litigation before the Crown Court.

The Court of Appeal specifically considered the act of filing of the Indictment. Counsel had drafted the indictment and it had been sent to the Court by the officer without approval from an authorised litigator.

The Court of Appeal held that this was not permitted. The filing of the indictment was clearly the conduct of litigation, because it is a formal step required in criminal proceedings before the Crown Court, and must be done with the approval of an authorised litigator. The case was allowed to proceed nonetheless: the Court of Appeal rejected arguments that the proceedings were a nullity and/or an abuse of process.

The Mazur case is a costs decision relating to work done in a civil case by an employee of a firm of solicitors. The employee was acting under supervision but was not themselves authorised to conduct litigation. The employee had done almost all of the work on the case, including obtaining initial instructions, engaging and drafting pre-action correspondence, drafting and filing the claim form, drafting and filing the Reply and Defence to Counterclaim, instructing counsel and drafting witness statements. At first instance, the Judge held that these actions were lawful because the employee was supervised by an authorised litigator.

On the appeal from the County Court, Sheldon J heard submissions from both the SRA and the Law Society as interveners. He held that this was not a permissible arrangement. He said:

> *"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."*

What amounts to conduct of litigation in criminal proceedings?

Regrettably, there is no straightforward answer to this question, and practitioners will have to consider this in a case-specific way. The authorities provide only guidance in general terms.

What is clear from the authorities is that an individual may be regarded as conducting litigation in two situations:

(a) If they do anything which amounts to taking a formal step in the proceedings; or

(b) If the cumulative effect of their activities as a whole show that they are performing the role of litigator on the case.

There is no definitive list of what amounts to a formal step in criminal proceedings. Based on the City of York case and relevant Law Society guidance, the following appear to be regarded as falling within the scope of reserved litigation activities:

- Commencing proceedings by laying an information
- Serving the summons
- Serving the IDPC
- Making a bail application
- Lodging the indictment
- Making an application to dismiss
- Filing a defence statement
- Making or responding to a formal application relating to trial, such as a bad character application, hearsay application or application pursuant to Section 78 of PACE
- Filing a Notice of Appeal or Respondent's Notice

That is by no means and exhaustive list, and a decision should be taken on a case-by-case basis as to whether an action amounts to a formal step in the proceedings. Also, the authorities suggest that the Court may also look at the totality of the person's actions to decide whether their activities cumulatively amount to conducting the litigation.

On the other hand, Law Society guidance suggests that the following individual steps would not amount to the conduct of litigation.

- Advising a defendant pre-charge
- Instructing expert witnesses
- Analysing the served evidence and schedules of unused material
- Taking a proof of evidence from a defendant
- Taking statements from witnesses
- Preparing a defence jury bundle
- Drafting a response to a POCA application

The Law Society's guidance also states that in their view Instructing Counsel does not amount to the conduct of litigation. The Law Society have been clear and consistent on this approach, although it should be noted that in Baxter Cavanagh J held (at §223) that the giving of instructions to an advocate could amount to the conduct of litigation, even in isolation.

It has been suggested that 'entering a plea' is a formal step in the proceedings which should be approved by an authorised litigator. However, the decision whether to plead guilty or not guilty can only be taken by the lay client themselves, and the formal step of entering the plea is undertaken by the lay client themselves. Legal representatives can only give advice relevant to the decision on plea, and the giving of advice is not a reserved activity (see Agassi at §59; Baxter at §201). The only exception to this is entering a plea on behalf of a company or other corporate body.

Can a Chartered Legal Executive or Paralegal prepare draft documents?

What Mazur decides is that it is not enough that the employee is acting under the (general) supervision of an authorised litigator. However, that does not prevent an arrangement whereby preparatory work and drafting is done by a non-authorised person then 'signed off' by an authorised litigator. In fact, an employee in that position can do an extensive amount of work as long as key actions and documents are specifically approved by the authorised litigator.

In those circumstances, the authorised litigator would be required to 'assume responsibility' for each relevant action. That requires specific approval of the decision, action or document, and where a signature is required (eg. on an application form) the document should be signed in the name of the authorised person. However, the employee can then serve or upload the document, as that would simply be providing administrative support.

The Law Society has emphasised that any such arrangement must be genuine in its nature. The authorised person approving any such action or document must have sufficient familiarity with the case and must properly approve the action or document. It is of course prudent to ensure that a written record is kept of the approval.

Why has the Mazur decision caused such concerns?

Many firms of solicitors and other organisations have long relied on non-authorised staff working on the basis that it is sufficient for the employee to work with general supervision on the case, rather than express approval of each relevant step. For many firms, the Mazur judgement disrupts that business model and will impact how individual solicitors are able to manage workloads without the ability to delegate responsibility to their staff.

Concerns have also been expressed about the practical effects on a day-to-day basis. Sometimes, issues arise at the Crown Court which require an immediate decision or immediate action. Counsel may be at Court either alone or supported by a paralegal. It may be necessary at short notice to take a significant step in the case, or make a formal application. Busy criminal solicitors are likely to be in the Magistrates' Court dealing with other cases, or at the police station looking after a client on a new case. They may not be available to give 'sign off' at short notice.

If that gives rise to unavoidable delay, that should be explained to the Court. Judges will have to be told that the consequence of the Mazur and City of York judgments is that care must be taken to ensure that the authorised litigator has had the opportunity to consider and approve any important decision or application. Solicitors are not expected to be at court in person all day, every day when a trial is in progress and LGFS fees do not allow for that expense.

However, in practice such situations will be rare. At least in the Crown Court, almost all significant actions and/or applications can be anticipated in advance and approval obtained, if necessary on a contingent basis. For example, the authorised litigator can approve in advance a trial strategy which provides that "if witness X does not come up to proof, we will make a no case submission".

In practice, there may be greater difficulty for junior counsel appearing in the **Magistrates Courts** where they may have been instructed at very short notice, may be dealing with a case at an early stage of proceedings, and/or may be dealing with a list of cases. If there is any doubt about a decision or the filing of a doucment, a short adjournment should be requested to obtain instructions or sign off. Again, if faced with pressure from Magistrates, District Judge or Court Clerk to circumvent these restrictions, it should be politely but firmly resisted on the grounds that BSB guidance and the decision in Mazur has made it necessary to ensure that express approval is required for all steps in the litigation.

Does any of this apply directly to barristers?

The Mazur decision has not changed existing rules for barristers, rather it has led the BSB to reiterate its guidance on the limitations which apply to the conduct of proceedings by counsel.

It is, and always has been, the case that barristers should not upload formal applications (such as bad character applications, hearsay etc) to DCS unless they have been specifically considered and approved by the authorised litigator (which in the case of the prosecution is the reviewing lawyer). The same applies to initial indictments, but not necessarily routine amendments.

On the other hand, barristers are entitled to file and serve documents which are ancillary to their role as advocates in the case. Counsel are therefore entitled to file and serve documents such as:

- Skeleton Arguments
- Written Submissions
- Notes for Pre-Trial hearings
- Trial Openings
- Sentencing Notes
- Draft Agreed Facts
- Chronologies.

For professional reasons, it may nonetheless be necessary or appropriate to ensure that such documents are approved by an instructing solicitor before service, but such documents are ultimately the responsibility of the advocate in the case.

What are the implications for Chartered Legal Executives?

The Mazur decision has particularly impacted on members of CILEX, including Chartered Legal Executives who are not authorised to conduct litigation. Many of them are highly experienced legal professionals, including some with rights of audience, who have worked for many years on the

understanding that it was sufficient for their work to be conducted under the general supervision of approved litigators within their firm or organisation.

Although the Legal Services Act 2007 allows relevant professional bodies to apply to allow their members to obtain accreditation, litigation rights were only available to Chartered Legal Executives who also hold relevant rights of audience.

As a result of the judgment, CILEX has applied for, and obtained, as of the 3rd November 2025, recognition from the Legal Services Board enabling its members to become standalone authorised litigators.

Individual Chartered Legal Executives can now apply for accreditation without the need to apply for the corresponding rights of audience.

Although this is a very welcome development there are limits to its effect. Chartered Legal Executives are only a proportion of those CILEX members who undertake work of this kind, and so not all CILEX members would be able to obtain standalone authorisation to conduct litigation. Most staff in that position will continue to require 'sign off' for their work as discussed above.

Potential Further Changes

These cases have highlighted the fact that the law and professional regulations relating to reserved legal activities is in need of reform.

Both the SRA and the BSB have stated that they are considering whether updated guidance should now be issued. In 2024, the House of Commons Justice Select Committee recommended a review of the Legal Services Act 2007 and whether it remains compatible with the current legal market. Following the *Mazur* decision, the Justice Minister Sarah Sackman MP has met with the Legal Services Board to review its implications. She has stated that there is a "growing case for re-examining the legislative foundations of legal services regulation." The government's position is that potential legislative reform is "under active review".

Conclusion

The *Mazur* judgment restates long-established law but clarifies its application. It requires renewed attention to professional responsibilities in the conduct of criminal cases.

All formal procedural steps must be undertaken or expressly approved by an authorised litigator. Non-authorised staff may assist, draft, and advise, but cannot assume responsibility for the conduct of proceedings. Practitioners should review internal arrangements to ensure compliance and remain alert to further regulatory or legislative developments.