Neutral Citation Number [2026] EWCA Civ 369

Appeal No: CA-2025-002754
Case No: KA-2025-000012

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE KING'S BENCH DIVISION
Mr Justice Sheldon
[2025] EWHC 2341 (KB)
On appeal from HHJ Simpkiss

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/03/26

Before:
SIR GEOFFREY VOS, MASTER OF THE ROLLS
SIR COLIN BIRSS, CHANCELLOR OF THE HIGH COURT
and
LADY JUSTICE ANDREWS

- -

Between:

JULIA MAZUR
JEROME STUART

Claimants/Respondents

- and -

CHARLES RUSSELL SPEECHLYS LLP

Defendants/Respondents

- and -

THE SOLICITORS REGULATION AUTHORITY
THE LAW SOCIETY OF ENGLAND AND WALES

Respondents

-and -

CHARTERED INSTITUTE OF LEGAL EXECUTIVES

Appellant and Intervener

- and -

(1) THE LEGAL SERVICES BOARD
(2) THE LAW CENTRES FEDERATION T/A THE LAW CENTRES NETWORK
(3) THE ASSOCIATION OF PERSONAL INJURY LAWYERS

Interveners

The Claimants/Respondents appeared in person (Mrs Mazur and Mr Stuart)

The Defendants/Respondents did not appear and were not represented

Nicholas Bacon KC, Helen Evans KC, Teen Jui Chow and Faye Metcalfe (instructed by **Kingsley Napley LLP)** for **the Intervener/Appellant**, the **Chartered Institute of Legal Executives** (CILEX)

Tom Lowenthal (instructed by **Capital Law LLP**) for **the Respondent**, **the Solicitors Regulation Authority** (the SRA)

Richard Coleman KC, and Marianne Butler (instructed by Russell-Cooke LLP) for the **Respondent, The Law Society** (The Law Society)

Tim Johnston (instructed by **Hogan Lovells International LLP**) for **the Intervener**, **the Legal Services Board** (the LSB)

Benjamin Williams KC, Matthew Waszak, and Theo Barclay (instructed by **Irwin Mitchell LLP**) for **the Intervener, The Association of Personal Injury Lawyers** (APIL)

PJ Kirby KC and James Hall (instructed by **Allen Overy Shearman Sterling LLP**) for **The Law Centres Federation t/a The Law Centres Network** (LCN)

Hearing dates: 23, 25 and 26 February 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 31 March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Sir Colin Birss, the Chancellor of the High Court:

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A. Introduction and summary

1. At its foundation, this case concerns the proper meaning of the words "carry on the conduct of litigation" as they are used in the Legal Services Act 2007 (the 2007 Act). The question is whether people working in a law firm or a law centre, who are not themselves authorised individuals under the 2007 Act (unauthorised persons), are carrying on the conduct of litigation if they do so under the supervision of an authorised individual. If they are, as Sheldon J (the judge) held, those persons are committing a criminal offence under section 14 of the 2007 Act (unless they establish a lack of knowledge defence under section 14(2)). Section 14(4) of the 2007 Act provides that such a contravention also amounts to a contempt of court.

2. The judge distinguished at [64] of his judgment between: (a) supporting (or assisting) an authorised solicitor in conducting litigation, and (b) conducting litigation under the supervision of an authorised solicitor. The judge decided that an unauthorised person can do (a) but not (b). In reaching that conclusion, the judge was accepting the submissions of the Law Society and the Solicitors Regulation Authority (the SRA) that this represented the law.

3. There is no doubt that the judge's decision has had "real world impact" (as the Legal Services Board (the LSB) put it). That does not, however, mean that the decision was wrong. It is also plain that some of the guidance issued by the SRA and other regulators of legal services before the judge's decision was at variance with the legal position adopted by the judge. But that too does not mean that he was wrong.

4. The 2007 Act is to be construed against the background of the regulatory objectives in section 1 of the 2007 Act, which include improving access to justice, protecting the public interest and promoting adherence to professional principles (including maintaining proper standards of work).

5. Section 13(1) of the 2007 Act provides that the question of whether a person is entitled to "carry on an activity which is a reserved legal activity" is to be determined solely in accordance with the 2007 Act. Section 12(1)(b) of the 2007 Act makes the "conduct of litigation" a reserved legal activity. That is why I can focus on the meaning of the words: carrying on the conduct of litigation.

6. The Chartered Institute of Legal Executives (CILEX), supported by the Association of Personal Injury Lawyers (APIL) and the Law Centres Network (LCN), submitted that the judge was wrong to distinguish between: (a) supporting (or assisting) an authorised solicitor in conducting litigation, and (b) conducting litigation under the supervision of an authorised solicitor. They submitted that both activities were lawful. They submitted that to "carry on the conduct of litigation" involved two elements: performance and responsibility. Performance of the particular tasks required could be delegated to unauthorised persons working under the supervision of an authorised individual, without that authorised individual delegating the responsibility for the conduct of the litigation. So, provided the supervision and delegation were carried out appropriately, unauthorised persons could, CILEX and APIL submitted, perform tasks which were part of the conduct of litigation, such as commencing proceedings in a court. When that happens, those unauthorised persons are not carrying on the conduct of litigation. Instead, the authorised individual retains the relevant responsibility. As between the authorised individual and the unauthorised person, it is the authorised individual and only the authorised individual who is carrying on the reserved legal activity.

7. The reference here to an authorised individual rather than simply an authorised person is deliberate. Law firms are also required to be authorised under the 2007 Act (although law centres are not). This debate is not concerned with the bodies as authorised persons. It is concerned with the work that can be lawfully delegated to unauthorised persons by authorised individuals.

8. CILEX and APIL submit that many authorised individuals have been allowing unauthorised persons to conduct litigation under their supervision for many years. It is commonplace for authorised individuals (such as solicitors) to delegate the task of commencing proceedings to staff (such as clerks) under appropriate supervision. The clerks are often highly experienced, albeit they are not authorised individuals under the 2007 Act. For simple claims (such as routine debt claims or routine personal injury claims), clerks will draft the documents and take the steps necessary to commence the proceedings in court. That might involve using one of the court's IT systems (such as Money Claims Online) or it might be a paper process involving posting the draft claim form to the Civil National Business Centre. CILEX submitted that, from the point of view of both the client and the court, the authorised individual retained responsibility for the litigation at all times.

9. By contrast, the Law Society submitted that, where an authorised individual and an unauthorised person are working on an activity falling within the scope of the conduct of litigation, the authorised individual must take responsibility for it by directing and

controlling the performance of the activity. The unauthorised person can assist or support the authorised individual, but the authorised individual must direct and control what takes place. In this context, the words "support" and "assist" mean much the same thing.

10. In relation to the commencement of proceedings, the Law Society submitted that the unauthorised person was allowed to prepare the draft documents (such as the claim form), but was not lawfully permitted to take the next step of formally using the documents to start the proceedings before the authorised individual had approved them. The Law Society said, in their initial oral submissions, that this requirement for prior approval applied to every individual set of proceedings. An unauthorised person could not lawfully start the proceedings without the documents being first approved by the authorised individual even in a case of urgency (for example where the limitation period was about to expire and the authorised individual was uncontactable). The prior approval was the way in which the authorised individual took responsibility for what was to happen.

11. That original submission drew the line in a coherent place which, on the face of it, might fit in with the words "carry on the conduct of litigation". It was, however, also remarkable in that it highlighted how many solicitors had adopted a method of operation that meant they were potentially committing a criminal offence every time they allowed an unauthorised person to issue proceedings without their specific prior approval of the documents.

12. The SRA added a qualification. The qualification contemplated that there could be situations involving rigorous controls and systems, for certain kinds of case such as simple debt claims, in which not every document had to be seen by an authorised individual before it went out. The SRA accepted that this would involve some proceedings being commenced without the authorised individual knowing about them in advance. Nevertheless, the SRA contended, no offence would be committed. The Law Society then adopted this qualification to its case.

The issues in the appeal

13. Against that background, there are essentially three issues in the appeal:

    i) Was the judge right to hold that unauthorised persons were "carrying on the conduct of litigation" if they did acts that constituted the conduct of litigation under the supervision of an authorised individual? (The first issue).

    ii) What acts actually constitute conducting litigation? In this regard (and in relation to the first issue), it will be necessary to consider the correctness of the recent decision of Cavanagh J in *Baxter v Doble* [2023] EWHC 486 (KB), [2023] 1 WLR 2948 (*Baxter*). (The second issue).

    iii) Whether the working model adopted by Law Centres (whereby a group of authorised individuals delegate the conduct of litigation to unauthorised persons, whilst supervising their work and retaining ultimate responsibility for it) is contrary to the 2007 Act? (The third issue).

Summary of arguments and decision on the first issue

14. On the first issue, all parties except the LSB submitted that carrying on the conduct of litigation involved **directing**, **controlling** and **being responsible for** those tasks within the scope of the conduct of litigation as well as doing the tasks themselves. The parties differed as to what the words "directing, controlling and being responsible for" really meant, but all agreed that the regulatory objectives (see [4] above) and the professional principles and duties to the court provided for in the 2007 Act are important.

15. I shall address the first issue in three sections.

16. First, I shall explain the context and purpose of the 2007 Act by considering its history: (i) from Victorian times to the Solicitors Act 1974 (the 1974 Act), (ii) from the 1974 Act to the Courts and Legal Services Act 1990 (the 1990 Act), and (iii) the authorities after the 1990 Act.

17. Secondly, I will consider the proper construction of the 2007 Act by reference to: (i) the intention of Parliament, (ii) the ordinary meaning of the words used, and (iii) the authorities after the 2007 Act.

18. Thirdly, I will explain my conclusions on the first issue.

19. My conclusion as to the context and purpose of the 2007 Act is as follows. Before the 2007 Act, there was a widespread, general and well-regulated practice of delegation by solicitors to unqualified individuals. That practice was recognised and taken into account by the courts, as is epitomised in *The Law Society v Waterlow Bros & Layton* (1883) 8 App Cas 407 (HL) (*Waterlow*) and *Hollins v Russell* [2003] EWCA Civ 718, [2003] 1 WLR 2487 (CA) (*Hollins*). It was a matter for the solicitor principal to decide what tasks should be delegated and to whom, and to put in place proper arrangements for the management and supervision of that work. This practice of delegation did not absolve solicitors of their professional responsibilities for the performance of the person undertaking delegated duties. Nor did it undermine either the solicitors' duties to their clients or their duties to the court. There is also clear authority that the ambit of the predecessor offence to section 14 of the 2007 Act, which was in section 70 of the 1990 Act, was interpreted narrowly (see *Agassi v Robinson (Inspector of Taxes) (Bar Council intervening)* [2005] EWCA Civ 1507, [2006] 1 WLR 2126 (*Agassi*)).

20. My conclusion as to the proper construction of the 2007 Act is that it was not intended to and did not make a significant change from the 1990 Act in relation to the offences in section 70 of the 1990 Act and section 14 of the 2007 Act. The 2007 Act was indeed a liberalising statute in relation to the diversity of regulatory bodies, but that is not relevant to what we have to decide. The historical context is relevant to this conclusion. Parliament must be taken to have understood that individual solicitors had, and were regulated in respect of, a widespread practice of delegating litigation work to unqualified individuals. The regulatory regime applicable to solicitors addressed the process of delegation in detail. It included provisions for proper delegation and supervision. When delegation took place, the solicitor delegator retained professional responsibility for the delegated tasks.

21. The ordinary meaning of the words: "conduct of litigation" refer to the tasks to be undertaken, whilst the words "carry on" refer to direction and control of, and responsibility for, those tasks. I reject the suggestions that: (i) the words "carry on"

refer simply to doing acts, and (ii) the word "conduct" includes the requirement for direction, control and responsibility.

22. There have been two important authorities since the 2007 Act: *Ndole Assets v Designer M&E Services* [2018] EWCA Civ 2865 (*Ndole*) and *Baxter*. Both *Ndole* and *Baxter* involved an unauthorised person purporting to act in litigation for a litigant in person as their client. In that situation, there is, of course, no authorised individual at all. Litigants in person have a personal right to carry on the conduct of litigation, but they have no right to delegate the conduct of litigation to an unauthorised third party. These cases are entirely distinguishable from the situation in this case, where an authorised individual seeks to delegate tasks amounting to the conduct of litigation to an unauthorised person working under the authorised individual's supervision.

23. *Ndole* is authority for the proposition that, under the 2007 Act and consistently with *Agassi* under the 1990 Act, unauthorised persons are free to carry out purely mechanical or administrative tasks which are within the scope of the conduct of litigation (such as a postal worker delivering a letter containing a claim form). An unauthorised person who performs such tasks for a litigant in person or anyone else is not carrying on the conduct of litigation. *Ndole* is also authority for the proposition that persons must assume responsibility for the tasks that amount to the conduct of litigation, if they are to be held to have been carrying on the conduct of litigation. In *Ndole*, an unauthorised person (acting for a litigant in person with no right to delegate) had performed tasks within the conduct of litigation such as service of the claim form. The question was whether those tasks were purely mechanical and administrative tasks or whether the unauthorised person had assumed responsibility for them. This was held to be a question of fact and degree. Importantly, however, that is not the question in this case. This case concerns the relationship between an authorised individual with the power to delegate, who maintains responsibility for the conduct of litigation, and an unauthorised person performing tasks for them and on their behalf.

24. *Baxter* applied the same approach as *Ndole* in similar circumstances. It applied the same analysis of fact and degree to the same issue, namely whether an unauthorised person (acting for a litigant in person with no right to delegate), who had performed tasks within the conduct of litigation such as service of a statement of case, had assumed responsibility for those tasks and as a result had carried on the conduct of litigation. The question of fact and degree which arose in *Baxter* was the same as the one in *Ndole*. *Baxter* was only addressing the question of which tasks were within "the conduct of litigation" in that context. *Baxter* did not consider the issue of an unauthorised person performing tasks for and on behalf of an authorised individual with the power to delegate who maintains responsibility for the conduct of litigation.

25. Against this background, my conclusion on the first issue is as follows. An unauthorised person can lawfully perform any tasks, which are within the scope of the conduct of litigation, for and on behalf of an authorised individual such as a solicitor or appropriately authorised CILEX member. The authorised individual retains responsibility for the tasks delegated to the unauthorised person. The authorised individual is, therefore, the person carrying on the conduct of litigation. The unauthorised person is not carrying on the conduct of litigation and does not commit an offence. The delegation of tasks by the authorised individual to the unauthorised person requires proper management supervision and control, the details of which are a matter for the regulators. In some circumstances the degree of appropriate control and

supervision will be high, with approval required before things are done. In other, for example routine, circumstances, a lower level of control and supervision will be required. In such cases, it may be sufficient for the authorised individual to conduct regular meetings with the unauthorised person and to sample their work. The degree of prior approval contended for by the Law Society and SRA is not required by the 2007 Act. In short, provided the authorised individual puts in place appropriate arrangements for supervision of and delegation to unauthorised persons, those persons may perform tasks that amount to the conduct of litigation for and on behalf of the authorised individual.

26. The authorised individual retains the responsibility envisaged by the 2007 Act. That includes both: (a) the formal responsibility for the task, such as service, performed by the unauthorised person, and (b) the responsibilities identified at section 1(3) of the 2007 Act as the professional principles which it is the regulatory objective to promote and maintain (see section 1(1) of the 2007 Act). The authorised individual retains the responsibility to act with independence and integrity (section 1(3)(a)), to maintain proper standards of work (section 1(3)(b)), to act in the best interests of their clients (section 1(3)(c)), and to comply with their duty to the court to act with independence and in the interests of justice (section 1(3)(d)).

27. The result of this case means that the role of an unauthorised person in the context of the conduct of litigation is not limited merely to assisting or supporting an authorised individual, and the distinction drawn in the court below by the Law Society and SRA, and adopted by the judge, between (a) supporting (or assisting) and (b) conducting litigation under supervision was not correct. It is not unlawful for an unauthorised person to act for and on behalf of an authorised individual so as to conduct litigation under their supervision, provided the authorised individual puts in place appropriate arrangements for the supervision of and delegation to the unauthorised person.

Summary of the decision on the second issue

28. As I have suggested at [24] above, *Baxter* has been misunderstood. It concerned a situation in which an unauthorised person conducted litigation for a litigant in person, which is not this case. *Baxter* did not, in its decision, expand the tasks within the ambit of the conduct of litigation. As I have said at [24] above, *Baxter* applied the "fact and degree" test emerging from *Ndole* (see [184]-[185]) to the question of whether an unauthorised person (acting for a litigant in person with no right to delegate) had undertaken tasks that amounted to carrying on the conduct of litigation. *Baxter* decided at [194] and [200] that the unauthorised person in question had **not** been undertaking purely mechanical tasks and **had** assumed responsibility for the conduct of the litigation. Those were the correct questions, so *Baxter* was not wrongly decided.

29. My consideration of the second issue identifies some tasks which are clearly within the conduct of litigation, and some tasks that are clearly outside the conduct of litigation. Despite, however, the obvious desirability of clarity, I have concluded that it is simply not possible to provide a comprehensive list of all those tasks that fall within and outside the conduct of litigation.

Summary of the decision on the third issue

30. As I have already said, the third issue concerned the working model or practice adopted by Law Centres. That practice involves a group of authorised individuals delegating the conduct of litigation to unauthorised persons. This model or practice is governed by the same principles as I have already described in answering the first issue. Accordingly, no separate treatment of the third issue is actually necessary.

31. This court has heard much fuller argument than either of the courts below. I would allow the appeal, but I do not find the result that the judge reached surprising. The judge asked for assistance, but he did not receive as much help as could have been expected.

Shape of this judgment

32. This judgment deals with these issues in the following order: (i) the relevant statutory materials, (ii) the factual background in this case, (iii) a summary of the parties' submissions, (iv) the three issues taken in turn, and (v) conclusions.

B. The Legal Services Act 2007

33. The 2007 Act created a scheme for the regulation of legal services. It replaced the 1990 Act, which in turn replaced provisions which had been in the various Solicitors Acts going back to before the Victorian era (in the Attorneys and Solicitors Act 1729).

34. The regulatory objectives of the 2007 Act are set out in section 1, as follows:

> "**1 The regulatory objectives**
>
> (1) In this Act a reference to "the regulatory objectives" is a reference to the objectives of–
>
> (a) protecting and promoting the public interest;
>
> (b) supporting the constitutional principle of the rule of law;
>
> (c) improving access to justice;
>
> (d) protecting and promoting the interests of consumers;
>
> (e) promoting competition in the provision of services within subsection (2);
>
> (f) encouraging an independent, strong, diverse and effective legal profession;
>
> (g) increasing public understanding of the citizen's legal rights and duties;
>
> (h) promoting and maintaining adherence to the professional principles;
>
> (i) promoting the prevention and detection of economic crime.

> (2) The services within this subsection are services such as are provided by authorised persons (including services which do not involve the carrying on of activities which are reserved legal activities).
>
> (3) The "professional principles" are–
>
> (a) that authorised persons should act with independence and integrity,
>
> (b) that authorised persons should maintain proper standards of work,
>
> (c) that authorised persons should act in the best interests of their clients,
>
> (d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice, and
>
> (e) that the affairs of clients should be kept confidential.
>
> (4) In this section "*authorised persons*" means authorised persons in relation to activities which are reserved legal activities.
>
> (5) In subsection (1)(i) "*economic crime*" has the meaning given by section 193(1) of the Economic Crime and Corporate Transparency Act 2023."

35. Almost all these regulatory objectives are relevant in this case but the objectives of particular relevance are sections 1(1)(a), (c), (d), (e), (f) and (h), in other words the public interest, access to justice and the interests of consumers, competition in the provision of services, and an independent, strong, diverse and effective legal profession, and the maintenance of professional principles. The professional principles referred to are defined in section 1(3) (see [34] above).

36. Section 1(2) provides explicitly that the services that the 2007 Act is concerned with are all services provided by authorised persons and not only activities within the defined class of reserved legal services.

37. Section 2 of the 2007 Act set up the LSB. The LSB is a public body responsible for regulating the legal services sector as a whole. It has a duty (by section 3 of the 2007 Act) to promote the regulatory objectives. Schedule 4 to the 2007 Act provides for a series of "approved regulators". They include the Law Society, the Bar Council and CILEX.

38. Section 12 of the 2007 Act defines a set of six "reserved legal activities". Section 12(1) provides:

> "(1) In this Act "reserved legal activity" means–
>
> (a) the exercise of a right of audience;
>
> (b) the conduct of litigation;
>
> (c) reserved instrument activities;
>
> (d) probate activities;
>
> (e) notarial activities;
>
> (f) the administration of oaths."

39. Section 12(3) then defines the term "legal activity" in such a way as to include all the reserved legal activities and also other activities which fall within a definition in section 12(3)(b). One of those other activities is "the provision of legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes" (section 12(3)(b)(i)). In other words, put shortly, providing legal advice is a "legal activity" but not a "reserved legal activity".

40. The reserved legal activities set out in section 12(1) are themselves defined in schedule 2 to the 2007 Act. This case concerns the conduct of litigation, which is defined in paragraph 4 of schedule 2 as follows:

> "(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).
>
> (2) But the "conduct of litigation" does not include any activity within paragraphs (a) to (c) of sub-paragraph (1), in relation to any particular court or in relation to any particular proceedings, if immediately before the appointed day no restriction was placed on the persons entitled to carry on that activity."

41. I draw attention at this stage to only two aspects of paragraph 4 of schedule 2. The first item in the list at paragraph 4(1)(a) is the issuing of proceedings before any court in England and Wales. In the civil justice context, that refers to the formal process of starting a case when a draft claim form is provided to a court office, along with the appropriate fee, and the court creates a record of the claim and gives the claim an action number, seals the claim form which now bears the action number with the court seal, and takes the fee. The sealed claim form can now be served on the defendant, in some cases by the court or in others by the claimant. Although historically this was done on

paper, today the majority of civil claims are issued using electronic systems, but the essential process is the same. It might be said that it is really the court which "issues" a claim but this definition in the 2007 Act is clearly referring to the process undertaken by a claimant, or someone on their behalf, dealing with the court in order to make this happen.

42. The second aspect to note is that paragraph 4(2) appears to remove something from the definition by reference to the position before the appointed day.

43. Section 13 of the 2007 Act deals with the entitlement to carry on a reserved legal activity. By section 13(1) and (2):

> "(1) The question whether a person is entitled to carry on an activity which is a reserved legal activity is to be determined solely in accordance with the provisions of this Act.
>
> (2) A person is entitled to carry on an activity ("the relevant activity") which is a reserved legal activity where–
>
> (a) the person is an authorised person in relation to the relevant activity, or
>
> (b) the person is an exempt person in relation to that activity.
>
> (3) Subsection (2) is subject to section 23 (transitional protection for non-commercial bodies)"

44. So, persons entitled to carry on a reserved legal activity can be authorised persons or exempt persons (or a non-commercial body falling within section 23 of the 2007 Act). Jumping ahead to sections 18-19 and schedule 3, authorised persons are defined in section 18. Section 18(1)(a) provides essentially that, in relation to a given reserved legal activity, an authorised person is a person who is authorised to carry on the relevant activity by a relevant approved regulator.

45. Exempt persons are defined by section 19 and schedule 3. Schedule 3 is structured by reference to the six reserved legal activities and sets out categories of exempt persons by reference to each reserved legal activity. Paragraph 1 of schedule 3 relates to rights of audience. I shall return to paragraph 1(7), upon which the parties placed considerable reliance, in due course.

46. Paragraph 2 of schedule 3 relates to the conduct of litigation. It makes a person who is a party to the proceedings an exempt person in relation to the conduct of litigation (see paragraph 2(4)).

47. Returning to the main body of the 2007 Act, section 14 provides for an offence of carrying on a reserved legal activity. The offence is defined in section 14(1) as follows:

> "(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."

48. On conviction a person guilty of the offence is liable to imprisonment for up to 2 years. There is also a defence in the following terms:

> "(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."

49. By section 14(4), a person guilty of the offence in the purported exercise of a right of audience or a right to conduct litigation, in relation to any proceedings or contemplated proceedings, is also guilty of contempt of the court concerned and may be punished accordingly.

50. Section 15 of the 2007 Act relates to the carrying on of reserved legal activities by employees. The drafting is complicated and does not need to be set out here. The Explanatory Notes to the 2007 Act provide a convenient explanation, as follows:

> "This section concerns the carrying on of reserved legal activities by employers and employees. Section 15(2) to 15(3), together with section 15(11), make it clear that where a person carries on an activity through an employee or manager both that person and the employee or manager are regarded as carrying on the activity and so both must be entitled to carry on the activity under the Act."

51. Section 16 defines as an offence to carry on a reserved legal activity through a person not entitled. The provisions are:

> "(1) Where subsection (2) applies it is an offence for a person ("P") to carry on an activity ("the relevant activity") which is a reserved legal activity, despite P being entitled to carry on the relevant activity.
>
> (2) This subsection applies if–
>
> > (a) P carries on the relevant activity by virtue of an employee of P ("E") carrying it on in E's capacity as such an employee,
> >
> > and
> >
> > (b) in carrying on the relevant activity, E commits an offence under section 14."

52. This means that if, in their capacity as an employee, the employee carries on a reserved legal activity, without being entitled to do so, and commits the offence under section 14, the employer will also commit an offence even if the employer had been entitled to carry on the reserved legal activity.

53. Section 20 defines as an approved regulator a body which has been designated as approved and whose "regulatory arrangements" have been approved. Section 21 relates to regulatory arrangements and brings within their scope, amongst other things, the

disciplinary arrangements in relation to "regulated persons". Regulated persons are in turn defined in section 21(3) and (4) as follows:

> "(3) In this section "regulated persons", in relation to a body, means any class of persons which consists of or includes–
>
> (a) persons who are authorised by the body to carry on an activity which is a reserved legal activity;
>
> (b) persons who are not so authorised, but are employees of a person who is so authorised.
>
> (4) In relation to an authorised person other than an individual, references in subsection (2) and (3) to employees of the person include managers of the person."

54. So, by this provision, employees of an authorised person are brought within the scope of the expression "regulated persons". That does not mean they can be treated as if they were authorised persons. It means that regulators can make regulations applicable to them.

55. Section 23 provides for "transitional protection" for non-commercial bodies. By section 23(1), during the "transitional period" – which has never been brought to an end since the 2007 Act came into force – a body within section 23(2) is entitled to carry on an activity which is a reserved legal activity. By section 23(2)(a), this applies to a not-for-profit body. This section was relied upon by LCN.

56. As I have already mentioned, the parties placed significant reliance on paragraphs 1(7) and 1(8) of schedule 3, which provides an exemption in relation to rights of audience, as follows:

> **"1 Right of audience**
>
> (1) This paragraph applies to determine whether a person is an exempt person for the purpose of exercising a right of audience before a court in relation to any proceedings (subject to paragraph 7).
>
> […]
>
> (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).
>
> (8) This sub-paragraph applies to–
>
> (a) any authorised person in relation to an activity which constitutes the conduct of litigation;
>
> (b) any person who by virtue of section 193 is not required to be entitled to carry on such an activity."

57. This exemption applies to individuals whose work includes assisting in the conduct of litigation. If individuals satisfy two conditions, they have a right of audience for proceedings in the High Court or county court heard "in chambers" or for certain family court proceedings. The expression "in chambers" is an out-of-date reference to hearings held in the High Court or county court which were not held in public and were often procedural in nature. They were in the judge's room, the judge often being a Master (in the High Court) or District Judge (in the county court or District Registry).

58. The two conditions in paragraph 1(7)(b) were that the individual must be working under instructions given by another individual and under that individual's supervision (paragraph 1(7)(b)(i) and (ii)). The individual giving instructions and supervision is defined in paragraph 1(8), which includes the particular unauthorised persons mentioned in section 193(2) of the 2007 Act in relation to the conduct of litigation. Notably the instructions may be given "in relation to the proceedings" or "generally". The latter in this context must refer to instructions of a more general nature not specific to the proceedings.

59. Paragraph 2 of schedule 3 concerns the conduct of litigation. Paragraph 2(3) comprises an exemption for those having a right to conduct litigation under any "enactment" as follows:

> **"2 Conduct of litigation**
>
> (1) This paragraph applies to determine whether a person is an exempt person for the purpose of carrying on any activity which constitutes the conduct of litigation in relation to any proceedings (subject to paragraph 7).
>
> […]
>
> (3) The person is exempt if the person–
>
> (a) is not an authorised person in relation to that activity, but

> (b) has a right to conduct litigation in relation to those proceedings granted by or under any enactment."

60. The relevance of this paragraph is that, by CPR Part 2.3, a solicitor's employee is defined as a legal representative. That means, for example, that a solicitor's employee can sign a statement of truth to verify a statement of case such as the Particulars of Claim (CPR Part 22.1(6)(a)(ii)). CILEX contends that CPR Part 2.3 is an "enactment" within paragraph 2(3)(b) of schedule 3 of the 2007 Act.

61. There is a pair of exemptions in paragraphs 3 and 4 of schedule 3 relating to "reserved instrument activities" and "probate activities" (both reserved legal activities). It is only necessary to mention one set of these provisions as follows:

> **"3 Reserved Instrument Activities**
>
> (1) This paragraph applies to determine whether a person is an exempt person for the purpose of carrying on any activity which constitutes reserved instrument activities (subject to paragraph 7).
>
> […]
>
> (3) The person ("E") is exempt if–
>
> (a) E is an individual,
>
> (b) E carries on the activity at the direction and under the supervision of another individual ("P"),
>
> (c) when E does so, P and E are connected, and
>
> (d) P is entitled to carry on the activity, otherwise than by virtue of subparagraph (10).
>
> (4) For the purposes of sub-paragraph (3), P and E are connected if–
>
> (a) P is E's employer,
>
> (b) P is a fellow employee of E,
>
> (c) P is a manager or employee of a body which is an authorised person in relation to the activity, and E is also a manager or employee of that body.
>
> **…**
>
> (10) The person is exempt if the person is an individual who carries on the activity otherwise than for, or in expectation of, any fee, gain or reward."

62. The scheme here provides for an exemption in a situation in which an unauthorised individual E carries on the reserved legal activity at the direction and under the supervision of another individual P. The Law Society relied upon the fact that there is no equivalent exemption in paragraph 2 of schedule 3 concerning the conduct of litigation.

C. *The factual background in this case*

63. This case originates from a claim for unpaid fees brought by Charles Russell Speechlys LLP (CRS) against their clients, Mrs Mazur and Mr Stuart.

64. Mrs Mazur and Mr Stuart had engaged CRS do some legal work for them in 2023. They refused to pay CRS's fees of over £50,000. CRS engaged a second law firm, Goldsmith Bowers Solicitors (GBS), to recover the unpaid fees. A claim was issued against Mrs Mazur and Mr Stuart by GBS using the Money Claims Online IT system. The Particulars of Claim were signed by Peter Middleton as "Head of Commercial Litigation" at GBS. Mrs Mazur and Mr Stuart, who have some experience in these matters (see HHJ Simpkiss's judgment at [20]-[22]), identified that Mr Middleton did not hold a practising certificate. They made an application to the court on the basis that Mr Middleton was unlawfully conducting litigation, which was a reserved legal activity under the 2007 Act.

65. As they have done throughout this case, Mrs Mazur and Mr Stuart represented themselves at the hearing before DDJ Graham Campbell. CRS was represented by counsel instructed by GBS. GBS itself was not represented. In his judgment, DDJ Campbell noted material from the SRA which showed that: (i) Mr Middleton had been suspended from practice as a solicitor in 2008, and (ii) the SRA had later given GBS permission to employ him as a "Senior Litigation Executive". CRS submitted that GBS had the right to conduct litigation and to employ Mr Middleton, and that that was the end of the matter. However, Mrs Mazur and Mr Stuart drew DDJ Campbell's attention to *SRA v Khan* [2021] EWHC 3765 (Ch) (Fancourt J) (*Khan*), which they submitted showed that there was a separate requirement for an employer and employee to be authorised so that the authorisation of Mr Middleton's employer was not sufficient. DDJ Campbell held at [4] that the fact that Mr Middleton's employer was an authorised entity (which it was) did not give Mr Middleton the right to conduct reserved legal activities.

66. Therefore, as DDJ Campbell put the matter at [5], the question became "whether there [was] evidence that Mr Middleton [was] taking part in any reserved activity, in particular whether he [was] conducting litigation". DDJ Campbell referred to some of the evidence which showed that "Mr Middleton [appeared] to be the person who has 'conduct of the matter'". Then at [6], DDJ Campbell said that "[i]f Mr Middleton issued proceedings, they are in my view a nullity and should be struck out". He then decided that it would not be right to do anything which suggested serious criticism of GBS without giving GBS itself the opportunity to explain. DDJ Campbell's order of 29 May 2024 stayed the proceedings and directed that any application to lift the stay had to be supported by evidence from a partner of GBS giving a full explanation of the position. If no application was made in 3 months, CRS's proceedings would be struck out. Any application to lift the stay would be dealt with by the Designated Civil Judge (HHJ Simpkiss).

67. CRS made an application to lift the stay on 27 August 2024, supported by Mr Ashall's statement of the same date. Mr Ashall was a solicitor and director of GBS. At [4], Mr Ashall accepted that, notwithstanding that the SRA has given permission for GBS to employ Mr Middleton as a Senior Litigation Executive, he was not entitled to conduct any reserved legal activity. Mr Ashall explained, however, that he did not believe that he, Mr Middleton or GBS had done anything wrong.

68. Mr Ashall's statement set out at [5] an extensive list of the actions that Mr Middleton had taken. They included giving advice, taking instructions, drafting the claim form and submitting it to court using the firm's online account, serving the Particulars of Claim and other statements of case, having internal meetings and discussions with Mr Ashall and instructing counsel on the application.

69. At [6], Mr Ashall said that the position was fundamentally different from that in the *Khan* case, because Mr Ashall was a practising solicitor and an authorised person under the 2007 Act, who had the conduct of this litigation. Mr Ashall said this at [7]:

> "In submitting the Claim to Money Claim Online and thereby issuing proceedings [Mr Middleton] was supporting me in the conduct of litigation. As a firm specialising in commercial debt recovery GBS employs a number of non-authorised fee earners, all of whom issue proceedings in support of myself and the other Authorised Persons within the business. This is the norm in commercial debt recovery …".

70. At [10], Mr Ashall addressed the SRA's permission for Mr Middleton to be employed by GBS. Permission was first given in 2011 and was subject to his work being supervised by the then owner of GBS, Mr Bowers. Mr Ashall exhibited the most recent copy of the SRA permission which allowed GBS to employ Mr Middleton as a senior litigation executive subject to Mr Ashall's supervision. Mr Ashall said that he and Mr Middleton met/spoke regularly on individual cases and had monthly face to face meetings to discuss his work and progress generally. Mr Ashall said that Mr Middleton, himself and GBS had at all times complied with the conditions placed on Mr Middleton's employment by the SRA.

71. Finally, Mr Ashall explained that the title Head of Commercial Litigation was introduced in 2017 when the SRA removed a restriction on Mr Middleton supervising staff.

72. At some point (I infer about October 2024) GBS revised the working arrangements for handling the case so that from then on it was handled by Ms Adkin, a qualified solicitor (see HHJ Simpkiss's judgment at [11]).

73. On 18 November 2024, Mr Ashall made a self-report to the SRA in connection with Mr Middleton's position. Mr Ashall raised two concerns with the SRA: first, that Mr Middleton might have issued proceedings when not entitled to conduct a reserved legal activity as defined by the 2007 Act, and secondly that GBS might be employing Mr Middleton outside the conditions set by the SRA under section 41 of the 1974 Act, which required his direct supervision by Mr Bowers.

74. On 2 December 2024, the SRA reviewed Mr Ashall's report and decided not to investigate the matter. In relation to what Mr Middleton had done the SRA said:

> "[GBS] is authorised under the [2007 Act] arrangements as it is a firm authorised and regulated by the SRA under the powers delegated to it under the Act. Its employees are permitted to undertake "reserved activities" due to Section 21(3). We are satisfied Mr Middleton has not conducted a reserved legal activity without entitlement to do so, so are satisfied no further action is required on this occasion".

75. The SRA gave the following reasons in relation to GBS employing Mr Middleton. The SRA noted that Mr Bowers had left GBS in 2021, but in May 2022 the SRA had granted a variation of the approval of Mr Middleton's employment as a Senior Litigation Executive. One of the conditions imposed was that Mr Middleton's work had to be "directly supervised by Robert Ashall at all times". The SRA then explained:

> "This amendment has not been published on the SRA website and could be a contributory factor in the defendants' complaint. Since this decision, Mr Ashall has always supervised Mr Middleton's work.
>
> Therefore, we are satisfied there are no concerns about the supervision of Mr Middleton's work by Mr Ashall or [GBS]. We do not consider there has been a breach of our Standards and Regulations that would warrant further investigation on this occasion".

76. The application to lift the stay came before HHJ Simpkiss on 17 December 2024 with GBS separately represented by Mr Bennett, a solicitor advocate. Mr Bennett submitted that the stay should be lifted because Mr Ashall's evidence demonstrated that there could no longer be any question of a breach of the 2007 Act. Mr Bennett submitted that section 21(3) of the 2007 Act had entitled Mr Middleton to act as he had, essentially following the point made by the SRA on 2 December 2024 (see [74] above). Mrs Mazur and Mr Stuart argued that the claim had been issued in breach of the 2007 Act. They relied on *Baxter* in support of a submission that Mr Middleton was conducting litigation and on *Khan* for the separate requirement for an employer and employee to be authorised. They also submitted that the SRA had wrongly construed section 21(3) such that Mr Middleton had not been entitled to do what he did.

77. HHJ Simpkiss dealt at [32]-[35] with section 21(3) of the 2007 Act. He said at [35] that *Khan* did not concern a body regulated by the SRA and had not mentioned section 21. HHJ Simpkiss held at [37] that *Baxter* was a similar case to *Khan* in that the defendant, Mrs Doble, was using an unregulated company to conduct litigation so that section 21 did not apply. HHJ Simpkiss decided at [39] that it was not necessary for him to make a decision about the application of *Baxter* and *Khan* for two reasons. First, because there was no continuing question of any further breach of the 2007 Act, given the changes to the handling of the case made by Mr Ashall. Secondly, the SRA had confirmed on 2 December 2024 that Mr Middleton had authority to conduct litigation and that there were no concerns about Mr Ashall's supervision of Mr Middleton (see [74] above). HHJ Simpkiss decided to lift the stay and awarded costs to CRS.

78. On their appeal to the High Court, Mrs Mazur and Mr Stuart argued that nothing in the 2007 Act enabled an unauthorised person to conduct litigation under the supervision of an authorised person. Section 21(3) merely brought employees of authorised persons into the regulatory remit. It did not have the effect contended for in the SRA's decision about Mr Middleton, upon which HHJ Simpkiss had relied.

79. Mr Bennett, for GBS, submitted that Mr Middleton was entitled to conduct litigation under the supervision of Mr Ashall. The term "conduct of litigation" had a narrow definition, and section 21(3) authorised Mr Middleton, as an employee of an authorised person, to carry out reserved legal activities under the authorised entity's supervision.

80. Having heard the submissions of the parties, the judge invited the Law Society and the SRA to make submissions on the following questions (see [24] of the judge's judgment) that he had posed:

> "Pursuant to the [2007 Act], is a non-admitted person (such as a previously admitted solicitor, trainee solicitor, pupil barrister, paralegal, clerk etc.), who is employed by a firm authorised and regulated by the [SRA]:
>
> a. permitted to support an authorised solicitor in undertaking the reserved legal activity of conducting litigation?
>
> b. permitted to undertake the reserved legal activity of conducting litigation under the supervision of an authorised solicitor?
>
> c. permitted by virtue of the authorisation of the firm to undertake the reserved legal activity of conducting litigation themselves as an employee of the regulated entity?"

81. The Law Society submitted that section 21(3) did not have the effect contended for by GBS. Strikingly the SRA, despite its letter of 2 December 2024, agreed with the Law Society. The SRA disavowed the suggestion that section 21(3) permitted an employee to conduct litigation. Put very shortly, both the Law Society and the SRA answered the judge's questions: "yes", "no" and "no".

82. In a careful judgment dated 16 September 2025, the judge held that Mr Middleton was not entitled to conduct litigation under the supervision of Mr Ashall.

83. The judge noted at [30] that the "conduct of litigation" was defined more widely than it had been in the 1990 Act. Both the employer and employee had to be authorised under the 2007 Act (see [32] and [64]). The authorisation of the employer did not authorise an employee to conduct litigation. The SRA had been wrong to say that Mr Middleton had authority to conduct litigation under the supervision of Mr Ashall. The SRA's permission was needed to employ Mr Middleton but the SRA did not have the power to authorise Mr Middleton to conduct litigation. Section 21(3) defined "regulated persons", which are different from "authorised persons". Unqualified staff had an important supporting role in the conduct of litigation by solicitors, but their work must not cross the boundary into conducting litigation, which could only be done by an authorised person.

84. At [48], the judge decided HHJ Simpkiss's reliance on the SRA's letter of 2 December 2024 was an error of law. I have already alluded to the judge's conclusion as to the law at [64] of his judgment. He distinguished between an unauthorised person "supporting" an authorised solicitor and an unauthorised person conducting litigation "under the supervision of" an authorised individual as follows:

> "[HHJ Simpkiss's] reliance on the confirmation from the SRA that "Mr. Middleton had authority to conduct litigation under the supervision of Mr. Ashall" was also an error. 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 for the reasons that both entities have given and which I have summarised at paragraphs 25-42 above".

85. At [65] and [66], the judge relied on paragraph 1(7)(a) of schedule 3 (see [56]-[58] above) concerning rights of audience, as supporting the existence of his category (a). The judge said that nothing in the 2007 Act contemplated the judge's category (b).

86. At [67], the judge said that he did not need to decide whether Mr Middleton was conducting litigation under the supervision of Mr Ashall or was merely assisting or supporting Mr Ashall in the conduct of litigation. It would, he said, have been inappropriate to do so as it would interfere with any future regulatory intervention by the SRA and would be unfair to Mr Middleton, who was not a party.

87. The judge allowed the appeal from HHJ Simpkiss and overturned his costs order against Mrs Mazur and Mr Stuart.

88. Putting it neutrally, the judge's decision led to a great deal of comment and discussion and, as I have said, a "real world impact". Strong concerns were expressed that the decision was wrong and undermined the way in which large parts of the legal sector had been working for many years. Firm views were also expressed the other way to the effect that the judge's decision was correct. In any event, there was what I believe can fairly be called a scramble by various regulators to bring parts of their guidance into line with the law as identified in the judgment.

89. Prompted by the judgment, the LSB decided to undertake a review of the advice and guidance provided by approved regulators in relation to the conduct of litigation. In its interim report dated 29 January 2026, the LSB's interim findings were:

> "1. The material reviewed indicates that the availability of clear and consistent advice and guidance on how the profession should comply with the requirements of the [2007 Act] in relation to the conduct of litigation differed across parts of the regulated sector.
>
> 2. The material reviewed indicates that engagement on draft guidance between the approved regulators and regulatory bodies

> varied, which may have contributed to differences in how guidance was interpreted and applied.
>
> 3. The material reviewed indicates that the regulatory bodies held differing levels of information about the extent to which authorised and exempt persons within their regulated communities were in fact regularly engaged in the conduct of litigation."

90. Meanwhile on 31 October 2025 CILEX sought permission to appeal the judgment (but not the order as to costs). CILEX is the approved regulator for some 17,500 Chartered Legal Executive lawyers under the 2007 Act (although its regulatory functions have been delegated to CILEX Regulation Ltd). CILEX explained that, whilst some of its members have express authorisation to conduct litigation (which CILEX obtained the authority to grant in 2011), the majority do not. It also explained that CILEX has its origins in a trade association of Managing Clerks employed by solicitors.

91. On 24 November 2025, Bean LJ granted CILEX permission to join the proceedings as an appellant. The Law Society and SRA were permitted to join the appeal, and three further parties were permitted to intervene: the LCN, the LSB and APIL. Applications to intervene by Mr Jackson Yamba, the Legal Services Ombudsman, Chartered Legal Executive Support Group Core and the Social Housing Law Association were refused.

D. The parties' submissions

(i) The submissions of CILEX

92. CILEX submits that the 2007 Act does not prohibit unauthorised persons carrying out tasks which would otherwise amount to the conduct of litigation when working under the supervision of an authorised individual who is carrying on the reserved legal activity of the conduct of litigation. CILEX, therefore, concludes that the judge was wrong to conclude at [64] that "conducting litigation under the supervision of an authorised solicitor" was prohibited by the statutory regime. This is ground 1 of CILEX's appeal. The other grounds raised are arguments in support of this ground. They do not raise separate issues in themselves.

93. CILEX submits that to "carry on the conduct of litigation" has two dimensions: the performance of the tasks within the ambit of the conduct of litigation and the responsibility for those tasks. CILEX argues that in a context in which the unauthorised persons are supervised by an authorised individual, the unauthorised person can perform these tasks for and on behalf of the authorised individual so long as the authorised individual retains responsibility for them. Putting it another way, so long as the unauthorised person does not usurp the authorised individual's responsibility for a task within the conduct of litigation, the unauthorised person can undertake it.

94. CILEX argues that this approach to the delegation of tasks has been commonplace for a very long time. It has applied particularly to tasks such as the commencement of proceedings in court which by law have been restricted to solicitors. The idea of delegation of this kind of task has been recognised and accepted by the courts. The judge's approach did not pay proper regard to this kind of agency.

95. CILEX submits that the words "carry on" in the 2007 Act support its construction but, even if they do not, the two dimensions of performance and responsibility must be found in the compound phrase "carry on the conduct of litigation" as a matter of construction. CILEX also sought support from the exemption at paragraph 1(7) of Schedule 3 (as to which see [56]-[58] above).

96. CILEX submits that, if the 2007 Act has the meaning attributed to it in the judgment below, then that represents a radical change in the law which does not fit with the purposes for which the 2007 Act was enacted. CILEX also draws attention to the saving provision in paragraph 4(2) of schedule 2 which relates to activities which were not restricted before the coming into force of the 2007 Act. CILEX's oral submissions placed less emphasis on this point, focussing more on the submission that the presence of savings of this kind supported its case on the purposes of the 2007 Act, rather than giving a distinct basis for allowing the appeal.

97. CILEX provided a witness statement of Simon Garrod, Director of Policy and Public Affairs at CILEX. Mr Garrod explained at [4] that, notwithstanding commentary suggesting that the law had not changed, his view was that, since the judge's decision, the impact on the legal sector, CILEX members and the public interest had been "profound, deep and ongoing".

(ii) The submissions of APIL

98. APIL made common cause with CILEX, arguing that the judgment will force many of its personal injury lawyer members to make significant changes to their operations and have negative consequences for them, for access to justice and for diversity in the legal profession. APIL provided a witness statement of John McQuater, a director of a specialist personal injury law firm, to back this up. APIL also argued that the judgment was inconsistent with the established practice of solicitors conducting work through non-solicitor employees, was inconsistent with the absence of an indication that the 2007 Act was intended to change that practice, and was counter to the purpose of the 2007 Act to enlarge the categories of professionals who could conduct litigation.

99. A particular aspect of APIL's submissions was a challenge to the approach to the definition of the conduct of litigation in *Baxter*. APIL submitted *Baxter* was wrong and should be overruled. The right approach, APIL submitted, was the one based on a line of previous authorities including *Agassi* and *R (Factortame Ltd) v Secretary of State for Transport, Local Government and the Regions (No. 8)* [2002] EWCA Civ 932, [2003] QB 381 (*Factortame*), both decided under the 1990 Act, and *Ndole*, decided under the 2007 Act. The key proposition that APIL derives from these authorities is that the words of the 2007 Act must be given a narrow ambit, given the penal nature of the provisions and the lack of clarity as to the meaning of "conduct of litigation".

100. APIL also suggested, in the alternative, that the absence of an exemption for unauthorised employees acting under supervision of an authorised person in the part of schedule 3 dealing with the conduct of litigation was a legislative error. The court could, therefore, apply a rectifying construction of the 2007 Act based on *Inco Europe Limited v First Choice Distribution* [2000] UKHL 15, [2000] 1 WLR 586, 592 and *Qader v ESure Services Ltd* [2016] EWCA Civ 1109, [2017] 1 WLR 1924. It has not proved necessary to examine this argument and I will say no more about it.

(iii) The submissions of the LCN

101. The LCN is a body representing 41 law centres which are all registered charities. The LCN provided a witness statement of Julie Bishop, the Director of LCN, which set out the effects of the judgment on its members. Ms Bishop describes the particular challenges presented by the judge's decision, which has upended the previously understood position in relation to the conduct of litigation. She explains that significant short-term reorganisation has been required, impeding the law centres' ability to provide much needed free legal advice to poorer sections of society. In the longer term, she believes that the judge's decision risks threatening the viability of at least some law centres and reducing the amount of work they can do in a sector which is already in distress. The problems faced by LCN and its members are also likely to be faced by others in the not-for-profit legal services sector.

102. Ms Bishop described the delegation model used in the law centres. The LCN requires each law centre to employ a minimum of two solicitors (or one solicitor and a CILEX member), who have been qualified for at least three years. These lawyers are supported by unauthorised staff, such as caseworkers, paralegals and trainee solicitors. Unauthorised and solicitor staff each carry their own caseloads and represent clients for the duration of their cases. Staff work in teams made up of solicitors, caseworkers, paralegals or trainee solicitors, with supervision by more experienced staff. Unauthorised staff are essential to the work of law centres. Law centres each have their own arrangements for supervision and their own individual structures. In general, counsel for the LCN submitted, the ratio of authorised solicitors to unauthorised case workers could be as much as one solicitor to five case workers. This model of operation for law centres had been broadly the same from at least 1996.

103. One of LCN's particular concerns was the impact that the judge's decision has had on the Housing Loss Prevention Advice Service (HLPAS). The HLPAS allows unauthorised law centre employees to see some 20 defendants or tenants facing eviction on every county court possession hearing day. The LCN employees need to advise tenants and to appear on their behalf either as McKenzie Friends or be granted *ad hoc* exemption by the court under paragraph 1(2) of schedule 3 to the 2007 Act.

104. The LCN made five additional points: (i) it noted that access to justice was one of the express regulatory objectives of the 2007 Act (section 1(1)(c)); (ii) it noted that the law centres' Legal Aid Agency contracts contain sophisticated and stringent requirements about supervision, an approach which was supported by the SRA's 2019 guidance on a solicitor's supervision of reserved legal activities in the not for profit sector (making the solicitor personally responsible for any litigation undertaken under supervision, and noting that the degree of delegation depends on the competence of the person carrying out the work, e.g. with close supervision of reserved legal activities when working with trainees while in other situations the solicitor may be able to delegate to a much greater extent); (iii) the transitional provision in section 23 of the 2007 Act ought to allow law centres to continue their approach to appropriate delegation and supervision; (iv) to the extent that *Khan* interpreted section 23 more restrictively, the LCN submitted it was wrong; (v) the LCN made a plea for the clearest guidance from the court, whatever the legal conclusions of the court.

(iv) The submissions of the Law Society

105. Counsel for the Law Society helpfully summarised his submissions during oral argument, putting them together as four steps:

i) Step one: an authorised person cannot delegate any activity that is a reserved legal activity to an unauthorised person, save to the limited extent contemplated in the exemptions in schedule 3 to the 2007 Act. There is no distinction between the right to carry on the activity and the activity itself.

ii) Step two: this means that, where an authorised person and an unauthorised person are working on an activity falling within the scope of the conduct of litigation, the authorised person must direct and control the performance of the activity. The unauthorised person can assist, but the authorised person must direct and control. For example, if the activity is the commencement of proceedings, the unauthorised person can prepare the claim form, but the authorised person must approve it before it is deployed on the client's behalf. Another way of putting this is that the authorised person must adopt it as his or her work, before it goes out. It is not enough that the authorised person may have some formal responsibility for what is done.

iii) Step three: the Law Society does not accept that there will be difficulties in practice identifying who in any given case is carrying on the activity, but if the question does arise, it is a question of fact and degree that is to be considered as a matter of substance, not form, focusing on the actual role and actual activity of the person in question (citing *Ndole* at [67] and [68], which the Law Society submitted was binding authority).

iv) Step four: there is nothing in the history that justifies rewriting the clear terms of the 2007 Act. The materials before the court have not established that, when the 2007 Act was enacted, solicitors could delegate the conduct of litigation to unauthorised persons without appropriately directing and controlling the work. Nor has it been established that if there was such a practice, Parliament intended it to continue. There is no obvious mistake that could justify a so-called rectifying interpretation.

106. It is worth noting that the Law Society's second step required what I would call "universal prior approval" by authorised individuals. In the face of pushback from the court, counsel for the Law Society suggested there might be scope for relaxing the requirement of universal prior approval in a very urgent context such as commencement of proceedings close to the expiry of a limitation period, but on reflection that submission was withdrawn. As I have already mentioned, however, at [12] above, the Law Society later withdrew its universal prior approval approach after the SRA's submissions.

(v) The submissions of the SRA

107. The SRA is the professional regulator for solicitors in England and Wales, which enforces section 14 of the 2007 Act and also regulates law firms and solicitors more generally. The SRA explained that it applies a public interest test in deciding whether to prosecute under section 14.

108. The SRA adopted the Law Society's submissions, subject, as I have said, to an important qualification in relation to "universal prior approval".

109. The SRA submitted that the 2007 Act is best understood as prohibiting an unauthorised person from being the person who exercises professional judgment in respect of the litigation and assumes substantive responsibility for it. It is not enough for the authorised individual to remain legally responsible. The SRA said that it was, for example, permissible for unauthorised persons to commence simple debt claims pursuant to rigorous systems and controls and detailed general instructions. Such instructions required, for example, detailed flow charts telling the unauthorised person exactly what to do and what to consider and when to ask for support or advice. In such a case, the substance of the conduct of litigation and the exercise of professional judgment and professional responsibility would remain with the authorised individual.

110. Counsel for the SRA accepted that its suggested qualification would necessarily involve situations in which the authorised person did not know that a set of proceedings had been issued. That was, according to the SRA, permitted by the 2007 Act, and not a criminal offence, leaving defences aside. As I have said, the Law Society later adopted the SRA's qualification to its requirement for "universal prior approval", effectively abrogating it.

(vi) The submissions of the LSB

111. The LSB made a plea for clarity and certainty. On the particular issues in this case, the LSB submitted that the 2007 Act as a whole drew a distinction between assistance and supervision. An unauthorised person may not, in the context of the conduct of litigation, go beyond assistance into conducting litigation under supervision. For an unauthorised person to give assistance does not require an exemption because it does not involve carrying on the conduct of litigation. The 2007 Act does contain exemptions for cases of supervision in relation to other reserved legal activities (paragraphs 3(3)-(4) of schedule 3 for reserved instrument activities and paragraphs 4(2)-(3) of schedule 3 for probate activities). Therefore, the LSB submitted that the absence of such an exemption in paragraph 2 of schedule 3 in respect of the conduct of litigation was determinative against CILEX's case.

112. The LSB also submitted that the term "carrying on" simply means "doing". It does not import any element of responsibility. Therefore, the offence is not aimed at the purported exercise of a right to "carry on" the conduct of litigation. It simply refers to "doing" the conduct of litigation.

113. The LSB submitted that the 2007 Act was not intended to make a dramatic change in the law from the position under the 1990 Act.

(vii) The submissions of Mrs Mazur and Mr Stuart

114. Mrs Mazur and Mr Stuart each made concise submissions. Mrs Mazur submitted that the 2007 Act should be able to be understood by ordinary people. She contended that the 2007 Act does make fairly clear who can conduct litigation but does not explain to anyone what the conduct of litigation is. On the meaning of the 2007 Act and the position of unauthorised persons, Mrs Mazur endorsed the Law Society's submissions. She also submitted that the position of law centres could be addressed by the court

granting case specific exemptions under paragraph 2(2) of schedule 3. Mr Stuart also supported the law centres, but submitted that the real problem here was a gross failure of regulation. He submitted that the judge's decision was right and that there needed to be a way to provide an amnesty for past inadvertent breaches.

Submissions in reply

115. CILEX submitted in reply that the SRA's qualification (later adopted by the Law Society) amounted to a concession that an unauthorised person could "do" a restricted act, such as commencing proceedings, without prior approval by an authorised individual. The only logical legal justification for this not being an example of "carrying on the conduct of litigation" by the unauthorised person must be because the authorised individual remains responsible for that act even though they have not approved it in advance. In other words, "carrying on the conduct of litigation" must involve not only doing an act but also an element of responsibility.

116. Secondly, CILEX accepted in reply that, where, for example, an authorised individual supervising unauthorised staff took a year's sabbatical leave, they would not properly be regarded as taking responsibility for litigation conducted during that period. Conversely, if the authorised individual was on holiday for a week, they could still be taking responsibility for conducting litigation undertaken by unauthorised persons in their absence.

117. Thirdly, CILEX identified in reply three factual situations relating to the conduct of court proceedings. The first is where, for example, a postal worker delivers a letter containing a claim form. It is clear from *Ndole* that such a task is purely mechanical or administrative in nature and that, in such a case, there is no need for the person undertaking that task to be an authorised individual. The second factual situation is when there is an authorised individual, such as a solicitor, conducting the litigation. In such a case, save for an extreme case such as the year's sabbatical leave mentioned at [116] above, there is no need for any factual enquiry, beyond checking that the individual is indeed authorised. The litigation in that case has all been carried out for and on behalf of the authorised individual. If that is the case, then no offence is committed. The third factual situation posed by CILEX can only occur when there is no authorised individual involved at all (as in cases such as *Khan*, *Agassi* and *Baxter*). In that situation, there is a need for an enquiry as to whether the unauthorised person has assumed responsibility for the reserved legal activity concerned. If so, a criminal offence has been committed.

E. The issues

118. As I have said at [13] above, the three issues to be determined are:

i) Was the judge right to hold that unauthorised persons were "carrying on the conduct of litigation" if they did acts that constituted the conduct of litigation under the supervision of an authorised individual?

ii) What acts actually constitute conducting litigation?

iii) Was the working model adopted by Law Centres contrary to the 2007 Act?

F. The first issue: Was the judge right to hold that unauthorised persons were "carrying on the conduct of litigation" if they did acts that constituted the conduct of litigation under the supervision of an authorised individual?

i) The context and purpose of the 2007 Act

119. This case is, at its foundation, an exercise of statutory construction. As Lords Sales and Stephens said at [15] in *Darwall v Dartmoor National Park Authority* [2025] UKSC 20, [2025] AC 1292 (*Darwall*), the courts undertaking that exercise are seeking to ascertain the meaning of the words used in a statute in the light of their context and the purpose of the statutory provision. The same point about the importance of context and purpose was made by Lord Burrows in *Hassam v Rabot* [2024] UKSC 11, [2025] AC 534 at [36], referring to *News Corp UK & Ireland Ltd v Revenue and Customs Comrs* [2023] UKSC 7, [2024] AC 89 at [27].

120. In *Darwall*¸ Lords Sales and Stephens also cited *R (N3) v Secretary of State for the Home Department* [2025] UKSC 6, [2025] 2 WLR 386 at [61]-[63] and the statement of principle made by Lord Hodge in *R (Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department* [2022] UKSC 3, [2023] AC 255, at [29]:

> "The courts in conducting statutory interpretation are 'seeking the meaning of the words which Parliament used': *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591, 613 per Lord Reid. More recently, Lord Nicholls of Birkenhead stated: 'Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context.' (*R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] 2 AC 349, 396). Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained. There is an important constitutional reason for having regard primarily to the statutory context as Lord Nicholls explained in *Spath Holme*, p 397: 'Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely upon what they read in an Act of Parliament'."

121. CILEX sought to rely on references to extracts from the Parliamentary debates leading to the enactment of the 2007 Act. I am not, however, persuaded that the material relied on is specific enough to resolve any ambiguity about the provisions of the 2007 Act, so that the rule in *Pepper v Hart* [1993] AC 593 is engaged (see also *Darwall* [40]-[43]).

122. To understand the context in which the 2007 Act was enacted it is necessary to divide the material into three parts. The first part starts in the Victorian era. The 2007 Act is the latest in a long line of statutes, including criminal sanctions, that relate to the regulation of legal services. Moreover, CILEX cited a number of old cases in order to seek to show that there was nothing controversial about unauthorised staff (historically referred to as "managing clerks") carrying out tasks that would now be called the conduct of litigation. The second part is a consideration of the period from the 1974 Act to the 1990 Act, not least because some of the important provisions in the 2007 Act have clear antecedents in both. The third part is a consideration of four cases decided under the 1990 Act: *Factortame*, *Gregory* v *Turner* [2003] EWCA Civ 183, [2003] 1 WLR 1149 (*Gregory v Turner*), *Hollins* and *Agassi.*

From Victorian times to the 1974 Act

123. *Waterlow* (1883) was an important case relied upon by both CILEX and the Law Society. It was concerned with probate activities rather than litigation but is nonetheless relevant. Solicitors instructed law stationers to attend the probate registry to take in wills and fetch away probate. The Law Society contended that the law stationers were breaching penal clauses in two statutes, which provided that such work had to be done by properly qualified proctors or solicitors. One of the statutes was section 2 of the Solicitors Act 1843 which provided (so far as relevant):

> "no Person shall act as an Attorney or Solicitor, or as such Attorney or Solicitor sue out any Writ or Process, or commence, carry on, solicit, or defend any Action, Suit, or other Proceeding in the Name of any other Person or in his own Name," [in any of the courts] "unless such Person shall have been admitted and enrolled and otherwise duly qualified to act as an Attorney or Solicitor".

124. CILEX drew attention to a passage at page 413 in *Waterlow* in which the Earl of Selborne LC referred to the practice in the courts, which did not breach the statutes, of "office messengers, officer servants, and office clerks" acting for solicitors in the transaction of solicitors' business and "not in any sense practising for themselves or in their own names". That observation bears out the point made by CILEX that the practice of using clerks is of long standing.

125. Of more significance, however, is the reasoning of the House of Lords in *Waterlow* on the question of whether the acts of the publishers in relation to probate incurred the penalties. The Earl of Selborne and the other members of the House of Lords held that the publishers had done nothing wrong. Their Lordships' reasons were the same. The statutes, which did require things to be done by qualified solicitors (or other named professionals) did not require the solicitor to do those things personally. The acts could be done in the solicitor's name by a competent agent and in such a case the agent acting in that way did not incur the penalties in the statutes. As the Earl of Selborne put it at page 411:

> "The existence of a real solicitor in every one of these cases, really applying for probate, initiating the whole matter, carrying on the whole business in his own name, although not personally going to the office, is a fundamental fact in the case".

126. Lord Blackburn recognised in *Waterlow* at page 415, however, that there were things that a solicitor could not delegate, if he was giving his own skill and judgment to his client. But in making that point, Lord Blackburn was not equating the boundary line between what could and what could not be delegated with the boundary between activities inside and outside the ambit of the penal provision. He was clearly contemplating that tasks within the ambit of the penal provision could be done in the solicitor's name by a competent agent. That was what the case was about.

127. *France v Dutton* [1891] 2 QB 208 (Court of Appeal) was a dispute over the recovery of the costs of Particulars of Claim signed by a solicitors' clerk rather than by a solicitor. The rules of court required Particulars of Claim to be signed by a solicitor. Coleridge CJ held that the clerk's signature was sufficient because it had been signed by the solicitor's clerk, who had authority to conduct business, and really conducted it for his master, the solicitor, and who had signed in the name of the solicitor.

128. In *Myers v Elman* [1940] AC 282 (House of Lords) (*Myers*), the successful plaintiff applied for an order that the unsuccessful defendant's solicitor pay the costs personally. The defendant's solicitor sought to defend himself on the basis that he had delegated the conduct of the litigation to his (unqualified) managing clerk, such that he did not personally commit any misconduct. The House of Lords made the costs order against the defendant's solicitor.

129. Lord Atkin in *Myers* noted at page 300 that the solicitor, Mr. Elman, was absent from his office for some weeks at a time and had entrusted the conduct of the litigation generally to his managing clerk, Mr. Osborn. Mr Osborn was unadmitted but had much experience of the conduct of litigation. At page 301, Lord Atkin identified the relationship between a solicitor's duty to the court and the use of an agent such as a clerk. He said this:

> "The duty owed to the Court to conduct litigation before it with due propriety is owed by the solicitors for the respective parties whether they be carrying on the profession alone or as a firm. They cannot evade the consequences of breach of duty by showing that the performance of the particular duty of which breach is alleged was delegated by them to a clerk. Such delegation is inevitable, and there is no one in the profession, whether in practice or as a judge, who will not bear ungrudging tribute to the efficiency and integrity with which, in general, managing clerks, whether admitted or unadmitted, perform their duties. The machinery of justice would not work without them. But as far as the interests of the Court and the other litigants are concerned it is a matter of no moment whether the work is actually done by the solicitor on the record or his servant or agent".

130. In June 1946, an article entitled *The Duties and Responsibilities of a Managing Clerk* appeared at page 29 in *The Solicitors' Managing Clerks' Gazette*, which described itself as *The Official Organ of the Solicitors' Managing Clerks' Association* (the article). The article surveyed the clerk's duties and responsibilities. Both CILEX and the Law Society relied on the article and contended it assisted their view of the case. The Law Society submitted that the article states in terms that solicitors must control the work

and must make important decisions and the clerk must act on the solicitors' decisions. The Law Society also submitted that the article applies today because the situation has not materially changed.

131. The article starts by explaining that the extent to which a managing clerk may be subject to supervision varies. In relation to control, the article says that: "control is naturally retained by the principals who dictate policy in conformity with client's instructions", and then that "[h]aving ascertained their clients' wishes principals usually instruct their managing clerks as to the work which falls to be carried out, and leave their managing clerks to execute the work in accordance with proper procedure".

132. The article also describes how "modern conditions" make a solicitor's life very busy so that: "the time which [a solicitor] can usually give to instructing staff is often very limited". The article then explains that: "[s]ometimes the solicitor is prevented by circumstances from giving instructions to his managing clerk, who is consequently left to decide and act for himself until he can obtain his principal's instructions". What the article suggests in these circumstances is quite clear. If necessary and if the circumstances warrant it, for example because rapid and decisive action is needed, then the managing clerk may have to take action without reference to their principal. They should do so with caution and avoid any bold course which exposes his principal or his principal's client to risk, but they can and should act. The article notes that sometimes mistakes will be made but also notes that the principal is answerable to his client for his own mistakes and those of his staff.

133. In my judgment, a fair reading of the article does not support the Law Society's submissions. While the article very sensibly expresses caution and ways to mitigate risk, it is nevertheless clear that a managing clerk can and would then, in a proper case, take steps and make decisions without the prior approval of their principal.

From the 1974 Act to the 1990 Act

134. By the time of the 1974 Act, there had been a number of Solicitors Acts since the Solicitors Act 1843 (the 1843 Act), referred to in *Waterlow*. The 1974 Act is still current, albeit that it has been amended. In its original form, section 20 of the 1974 Act (section 20) defined an offence in this way:

> "(1) No unqualified person shall –
>
> (a) act as a solicitor, or as such issue any writ or process, or commence, prosecute or defend any action, suit or other proceeding, in his own name or in the name of any other person in any court of civil or criminal jurisdiction; …"

135. This definition has the same structure as section 2 of the 1843 Act. Section 20 was amended when the 2007 Act came into force and in its current form it provides simply that it is an offence for an unqualified person to act as a solicitor.

136. The 1974 Act also includes the following relevant provisions: (i) section 25, which provides that no costs are to be recoverable in respect of anything done by an unqualified person acting as a solicitor, (ii) section 34A, which gives the Law Society power to make rules about employees of solicitors, and (iii) section 41, which relates

to the position of solicitors who have been disqualified by being struck off or suspended from practice. No solicitor is permitted to employ or renumerate a disqualified solicitor, but the Law Society can grant permission for this, subject to conditions. This was the power used by the SRA to permit GBS to employ Mr Middleton.

137. In July 1989 the government published its White Paper: *Legal Services, A Framework for the Future* (Cm 740) which led to the 1990 Act. The purpose of the 1990 Act was to allow for new and better ways of providing legal services and a wider choice of persons providing them, while maintaining the proper and efficient administration of justice (section 17 of Part II of the 1990 Act). In other words, the 1990 Act was a liberalising measure.

138. Sections 27 and 28 of the 1990 Act respectively defined whether a person had a right of audience or a right to conduct litigation. The sections provided that these rights were granted by appropriate authorised bodies and were given to the parties to the litigation, subject to qualifications and savings. The saving provision in section 28 of the 1990 Act is similar to (but not the same as) paragraph 4(2) of schedule 2 to the 2007 Act (see [40] above). Section 119 of the 1990 Act defined the right to conduct litigation as:

> "the right –
>
> (a) to exercise all or any of the functions of issuing a writ or otherwise commencing proceedings before any court; and
>
> (b) to perform any ancillary function in relation to proceedings (such as entering appearances to actions)".

139. Section 70(1) of the 1990 Act provided that a person was guilty of an offence if he does any act "in purported exercise of a … right to conduct litigation, in relation to any proceedings or contemplated proceedings when he is not entitled to exercise that right".

The authorities after the 1990 Act

140. In *Factortame* (Lord Phillips MR and Robert Walker and Clarke LJJ), the issue was whether a contingency fee agreement was caught by section 58 of the 1990 Act (concerning conditional fee agreements). One of the questions was the scope of the expression "conduct of litigation" in the 1990 Act. Lord Phillips MR giving a judgment of the court held at [25] that the definition of the "right to conduct litigation" in the 1990 Act had to be given a restricted ambit given its relationship to the offence in section 20 of the 1974 Act to 'act as a solicitor' (see [135] above).

141. In *Gregory* v *Turner* (Brooke, Sedley and Carnwath LJJ), the question was whether a non-lawyer had the right to conduct litigation on behalf of a claimant based on an enduring power of attorney giving the non-lawyer power to represent the claimant. The court rejected the submissions that: (a) a non-lawyer could be treated as exercising, on their behalf, the party's own right of audience (section 27(2)(d) of the 1990 Act) or the party's own right to conduct litigation (section 28(2)(d) of the 1990 Act). Both the right of audience and the right to conduct litigation were held to be non-delegable personal rights ([73]-[78] at [75] specifically).

142. In *Hollins* (Brooke, Hale and Arden LJJ), one question was about the operation of regulation 4 of the new Conditional Fee Agreements Regulations 2000. This required certain information to be given to the client by the legal representative, essentially to explain the effect of the Conditional Fee Agreement (CFA) before the client entered into it. The question was whether a solicitor could delegate the duty to give advice and information to a non-solicitor or another qualified litigator. It was held at [177] to [218] that such delegation was permissible, based on solicitors' general powers of delegation.

143. The court's reasons in *Hollins* were that: (i) a solicitor had always been able to delegate part of their functions in appropriate cases to appropriate people [177], citing *Waterlow* and also *Arbiter Group v Gill Jennings & Every* [2000] PNLR 680, (ii) those principles were reflected in the Solicitors Practice Rules which provided for proper supervision and management of both admitted and unadmitted staff, and in the Guide to the Professional Conduct of Solicitors 1999, which provided that a solicitor is responsible for exercising proper supervision over both admitted and unadmitted staff [183], and (iii) a solicitor who does delegate this function will remain professionally responsible for the performance of the person who performs the duties [195]. In delegating the work, the solicitor still has to comply with their supervisory responsibilities in the Solicitors Practice Rules and the Guide to Professional Conduct [212]; and (iv) The purpose of the 1990 Act was to foster new and better ways to conduct litigation ([217]).

144. Before leaving *Hollins*, I would draw attention to an earlier passage at [175]-[176] where the court rejected a distinct argument made in favour of delegation, based on section 27 of the 1990 Act concerning rights of audience. Section 27(2)(e) of the 1990 Act is in materially the same terms as the provision at paragraph 1(7) of schedule 3 to the 2007 Act. I will come back to this in context at [168] below.

145. The final case under the 1990 Act is *Agassi* (Brooke, Dyson, and Carnwath LJJ). The question was whether a successful taxpayer, acting in person, was entitled to claim as costs the fees of specialist tax advisers who were neither solicitors nor authorised litigators under section 28 of the 1990 Act, but who had advised and assisted the taxpayer in the conduct of litigation. The court held that the taxpayer could not recover the costs of any activities which it was not lawful (under section 70 of the 1990 Act) for the tax advisers to perform. Under the 1990 Act, the right to conduct litigation was defined in section 119 (see [138] above).

146. The court observed at [53] in *Agassi* that the background material to the 1990 Act shed no light on the meaning of the right to conduct litigation. The court rejected at [54]-[56] the submission that the statutory purpose of the 1990 Act was to make provision for new and better ways of conducting litigation so that the words "conduct of litigation" should **not** be given a narrow meaning. The court said at [55] that Parliament, had it intended to introduce a broad definition, could have done so. Instead, the definition in section 119 had been drafted so as to be limited to the first formal step in proceedings, coupled with a second limb referring to ancillary functions, which must have been intended to be limited to formal steps required in the conduct of litigation, given the words in brackets referring to entering appearances. The court concluded at [56]:

> "It is unfortunate that this important definition is so unclear. But because there are potential penal implications, its very obscurity means that the words should be construed narrowly."

147. The court in *Agassi* said that it could not see how legal advice given by tax advisers in connection with court proceedings could come within the definition of the "conduct of litigation". The fact that such advice was an integral part of the conduct of litigation did not make it an ancillary function for the purposes of the 1990 Act.

Conclusion on the context and purpose of the 2007 Act

148. Standing back from the detail, a clear picture emerges from the materials I have reviewed at [119]-[147] above. As I have said at [19] above, there was, before the 2007 Act, a widespread, general and well-regulated practice of delegation by solicitors to unqualified individuals. That practice was recognised and taken into account by the courts in *Waterlow* and *Hollins*. Before the 2007 Act, it was a matter for the solicitor principal to decide what tasks should be delegated and to whom. That principal had to put in place proper arrangements for the management and supervision of the work. Delegation did not absolve solicitors of their professional responsibilities for the performance of the persons to whom they delegated, and did not undermine the solicitors' duties to their clients and the court. *Agassi* is clear authority for the proposition that the ambit of the offence in section 70 of the 1990 Act (the predecessor of section 14 of the 2007 Act), was to be construed narrowly.

ii) The proper construction of the 2007 Act

149. The Explanatory Notes for the 2007 Act explain that, in 2001, the Office of Fair Trading published a report recommending that rules governing the legal professions should be subject to competition law and that unjustified restrictions on competition should be removed. The Government consulted publicly and published a report into competition and regulation in the legal services market. Sir David Clementi reported in December 2004 following an independent review of the regulation of legal services (the Clementi Review). The Clementi Review recommended reform of the regulatory framework and said that the current regulatory framework was "inflexible, outdated and overcomplex". It highlighted concerns about the complaints handling systems and the restrictive nature of business structures. The Clementi Review was followed by an October 2005 White Paper: *The Future of Legal Services: Putting Consumers First* (the White Paper).

The intention of Parliament

150. Overall, the preparatory materials for the 2007 Act suggest that one of the purposes of the 2007 Act was to reform the *regulation* of legal services (my emphasis). They contain no suggestion that what was intended was a dramatic change to the boundary provided by the two offences in existence before the 2007 Act (section 20 of the 1974 Act at [134] above and section 70 of the 1990 Act at [139] above). The LSB was right about that. The 2007 Act was indeed a statute that was intended to liberalise the 1990 Act, but in relation to the diversity of regulatory bodies, not the offences I have mentioned.

151. The historic context is relevant to the inferences that it is proper to make about the intention of Parliament in enacting the 2007 Act. Parliament must be taken to have understood that individual solicitors operated a widespread and regulated practice of delegating work undertaken in the conduct of litigation to unqualified staff. Parliament must also be taken to have known that there was a detailed regulatory regime applicable to solicitors providing for the proper delegation and supervision of unqualified staff. In

those cases, the delegating solicitor retained professional responsibility for the delegated tasks.

152. This context and the understanding of Parliament that I have described at [151] above is important. The position is similar to that in *Waterlow*, which was decided under the 1843 Act. There is nothing in the words of the 2007 Act itself, nor in any statement in the preparatory material, which requires an authorised individual to undertake the acts constituting the conduct of litigation personally. Moreover, there is nothing to indicate that Parliament intended the 2007 Act to abolish or curtail the practice of solicitors delegating tasks amounting to the conduct of litigation to unqualified staff. This delegation involved and involves unqualified staff acting for and on behalf of an authorised principal, who retains responsibility for the work. The delegation is covered by the applicable regulatory guidance and requirements.

153. It may also be noted that there is no basis in the 2007 Act for a more general distinction to be drawn between those tasks within and outside the scope of the "conduct of litigation". For example, the regulatory objective of promoting competition in the provision of services (at section 1(1)(e) of the 2007 Act) expressly applies to all services provided by authorised persons, and not only regulated legal services (see section 1(2) of the 2007 Act at [34] above). This approach to legal work contributes to access to justice by lowering costs. It also helps promote diversity in the legal profession since the ability of law firms to employ unauthorised staff lowers barriers to entry, as Mr McQuater described in APIL's evidence at [70]-[77]. These considerations show that, to undermine the practice of delegation would run counter to further regulatory objectives expressed in the 2007 Act such as improving access to justice (section 1(1)(c)), protecting and promoting the interests of consumers (section 1(1)(d)) and encouraging an independent, strong, diverse and effective legal profession (section 1(1)(f)).

154. These propositions support the inference that Parliament cannot have intended the 2007 Act to create a new situation in which an unauthorised person, undertaking a task within the conduct of litigation for and on behalf of an authorised individual, was carrying on the conduct of litigation.

155. There is one statutory indication to the contrary that needs to be addressed. I have already set out the exemptions for tasks supervised by authorised individuals under paragraph 1(7) of schedule 3 for rights of audience at [56]-[58] above, and under paragraphs 2 and 3 of schedule 3 for reserved instrument activities and probate activities at [61]-[62] above. I have noted the lack of a similar exemption for the conduct of litigation. I accept that this could be taken as an indication that no such exemption was intended in relation to the conduct of litigation, where proper delegation will also involve supervision. But, in my judgment, one cannot safely read across from the detailed drafting of provisions about one reserved legal activity to make inferences about what was intended in respect of another reserved legal activity. They are separate activities with their own histories and practices. I shall say a little more about paragraph 1(7) of schedule 3 at [161] below.

156. CILEX and APIL suggested that the saving provision in the definition of the conduct of litigation at paragraph 4(2) of schedule 2 (see [40]-[42] above) was another indication that Parliament had not intended the 2007 Act to make significant changes to carrying on the conduct of litigation. Neither party sought to identify a particular

case in which paragraph 4(2) would apply. I accept that paragraph 4(2) is some indication of the kind suggested by CILEX and APIL, but it is no more than that. CILEX demoted their reliance on this point from their written to their oral submissions. I think they were right to do so. It is a pointer, but, in my judgment, not a conclusive one.

The ordinary meaning of the words used

157. Section 13(1) of the 2007 Act (see [43] above) provides that the question of whether a person is entitled to carry on a reserved legal activity is to be determined solely under the 2007 Act. Section 14(1) of the 2007 Act (see [47] above) says that it is an offence for a person to carry on a reserved legal activity unless that person is entitled to do so. Section 12(1)(b) of the 2007 Act (see [38] above) provides that the conduct of litigation is a reserved legal activity. The conduct of litigation is defined in paragraph 4(1) of schedule 2 (see [40] above).

158. CILEX supported its submission that "to carry on" an activity conveyed the idea of someone being accountable for what was undertaken, by referring to the dictionary definition as including "to conduct, manage, work at, prosecute". CILEX also referred to *Graham v Lewis* (1888) 22 QBD 1 (*Graham v Lewis*), where the Court of Appeal held that that a solicitor's clerk, who was employed by a solicitor at his office in the City of London, did not thereby "carry on business" within the City. It was the solicitor's business that was being "carried on", not the clerk's business. The words "carry on business" described a person managing or conducting a business of his own (see also *Waghorn v Care Quality Commission* [2012] EWHC 1816 (Admin), where Cox J held that the words "carry on" took their meaning from the statutory context in which they appeared).

159. At first sight, there is not much between the constructions of the words "carrying on the conduct of litigation" advanced by CILEX and the Law Society. Both submit that an individual who is carrying on the conduct of litigation is someone directing and controlling the performance of the given task (as the Law Society sometimes put it) or someone taking responsibility for it (as CILEX would put it). It is worth noting first the common ground that takes the words "carry on" as a reference not simply to someone who undertakes a given task, but as involving a degree of direction or responsibility for it.

160. The LSB submitted, however, that "carry on" simply meant "do". It pointed out that "carry on" is used in the 2007 Act to apply to each of the six reserved legal activities, and the compound phrase "carry on the conduct of litigation" does not appear anywhere in the 2007 Act. Sections 13 and 14 respectively refer to a right to "carry on an activity which is a reserved legal activity" and to it being an offence for "a person to carry on an activity which is a reserved legal activity". That was why the LSB submitted that the words "carry on" simply meant to "do" the reserved legal activity in question. The LSB also referred to other places in the 2007 Act in which the "carry on" language was not used (such as in the exemption provisions in paragraph 2(3)(b) of schedule 3 – see [59] above).

161. Finally, in this connection, the Law Society placed reliance on paragraph 1(7) of schedule 3 to the 2007 Act (see [56]-[58] above). Paragraph 1(7) provides an exemption in respect of rights of audience in chambers (private) proceedings for

unauthorised persons "assisting in the conduct of litigation" under instructions from and "under the supervision" of an authorised individual. The Law Society submitted that this paragraph showed that the 2007 Act had identified "assistants" as a class of unauthorised persons who could work with an authorised person in the context of carrying on the conduct of litigation. The Law Society concluded that, since these unauthorised persons were merely assisting (or supporting) the authorised individuals, they did not carry on the conduct of litigation and so did not themselves need any express exemption. The Law Society also submitted that section 1(7) demonstrated that Parliament was aware of the possibility of allowing supervision of the conduct of litigation (see paragraph 1(7)(3)(ii)), yet it expressly chose **not** to include a specific provision exempting conduct of litigation undertaken under supervision.

162. I have evaluated these arguments carefully. I have decided, as I have said at [21] above, that the ordinary meaning of the words: "conduct of litigation" refer to the tasks to be undertaken, whilst the words "carry on" refer to the direction and control of, and the responsibility for, those tasks. The words "carry on" in the context of the "conduct of litigation" do not refer simply to doing acts.

163. There are the following six reasons for those conclusions.

164. First, it seems to me that the proper and natural legislative meaning of the words "carry on" did not change significantly when the 2007 Act was enacted. The term "carry on" has been used for many years in statutes in connection with the conduct of litigation (see, for example, sections 35 and 36 of the 1843 Act, section 45(1) of the Solicitors Act 1932, and section 18(1) of the Solicitors Act 1957). The words "carry on" are also used, for example in the general prohibition in section 19 of the Financial Services and Markets Act 2000 (FSMA) to provide that "[n]o person may carry on a regulated activity" unless they are authorised. Whilst none of the parties referred to authority on this section, one can quite see how the words "carry on" in FSMA might well connote more than just undertaking or doing a regulated activity – there might be some element of control or management required.

165. Secondly, whilst I accept the LSB's point that the words "carry on" are used about all 6 reserved legal activities, I cannot see that that is conclusive. To take one example, the meaning of carrying on "the exercise of a right of audience" (see section 12(1)(a)) may engage quite different considerations from the meaning of carrying on the conduct of litigation. The right of audience is defined in paragraph 3(1) of schedule 2 as "a right to appear before and address a court", so the term to be construed would be "carrying on the exercise of a right to appear before and address a court". Even allowing for the quite different context, one could imagine that the person exercising the right to appear in court might not be the same as the person carrying on the right to appear in court. If, for example, as envisaged by paragraph 1(7) of schedule 3, a supervised, but unauthorised, person appeared in Chambers for their solicitor principal, the person carrying on the exercise of the right of audience might be the principal. The supervised person might also bear responsibility, even though they were under the supervision and control of the principal. This brief discussion demonstrates what I have already said, namely that quite different considerations may apply to quite separate reserved legal activities. That said, however, even a consideration of the right of audience, leads to the conclusion that the words "carry on" may imply control and responsibility, at least in some situations.

166. Thirdly, I can understand also that the word "conduct" in "conduct of litigation" could imply some element of control, since a conductor, for example, controls his orchestra. But I do not think that one can separate "conduct" from "conduct of litigation". The conduct of litigation involves undertaking the tasks that litigation entails. That is clear from the definition in paragraph 4 of schedule 2 to the 2007 Act (see [40] above). The tasks are (a) the issuing of proceedings, (b) the commencement, prosecution and defence of proceedings, and (c) the performance of ancillary functions in relation to proceedings (such as entering appearances). That is why the expression "conduct of litigation" cannot by itself bear the meaning of direction, control and management of, and responsibility for, the litigation.

167. Fourthly, *Graham v Lewis* does indeed support this meaning of the words "carry on". A clerk to whom a solicitor's business was delegated was not "carrying on" that business in the City of London. The solicitor was carrying the business on because he (the solicitor) was directing, managing and controlling it.

168. Fifthly, no contrary conclusion can be inferred from paragraph 1(7) of schedule 3 to the 2007 Act. As I have already said at [165] quite different considerations apply to separate reserved legal activities. Paragraph 1(7) relates to rights of audience. But also, paragraph 1(7) does give some possible indication that the words "carry on" actually do imply control and responsibility. Moreover, as I have said at [144] above, the Court of Appeal in *Hollins* at [175]-[176] rejected the argument that section 27(2)(e) of the 1990 Act (the precursor of paragraph 1(7) of schedule 3 to the 2007 Act) allowed an inference to be drawn about delegation outside the right of audience context.

169. Sixthly, neither of sections 15 or 16 (see [50]-[52] above) affect my analysis. Those sections relate to circumstances which an employee actually carries on the relevant activity (in this case the conduct of litigation). In this case, however, the unqualified (and employed) person does not carry on the conduct of litigation when they perform the tasks for and on behalf of the authorised individual. As a result, neither of sections 15 and 16 is engaged.

170. To repeat, therefore, I conclude that the ordinary meaning of the words "conduct of litigation" refers to the tasks to be undertaken, and the ordinary meaning of the words "carry on" refer to direction and control of, and responsibility for, those tasks.

Authorities after the 2007 Act

171. So far, I have approached the 2007 Act as if it were free from authority. No case is directly on the point but, as I shall explain, the authorities also support the approach described above.

Ndole (2018)

172. In *Ndole*, CSD Legal Ltd (CSD) purported to act for Ndole Assets Ltd (Ndole). CSD served a sealed claim form on the defendant. Neither CSD nor its director, Mr Dain, were authorised to conduct litigation under the 2007 Act. The defendant argued that service of a claim form was within the conduct of litigation and so could not lawfully be done by CSD. In the High Court Coulson J had held that, since CSD was not a firm of solicitors, Ndole was in effect a litigant in person and it could delegate the task of service to an agent, just as a solicitor could ([2017] EWHC 1148 (TCC) at [36]).

173. The Court of Appeal in *Ndole* (Davis, McCombe and Jackson LJJ) disagreed with Coulson J. Davis LJ held that CSD could not lawfully serve the claim form. Ndole was entitled, as a litigant in person, to conduct litigation on its own behalf. There were, therefore, two extreme positions neither of which could be right [46]. One extreme was that an unauthorised person could not assist a litigant in person *at all* in the performance of a task which was a reserved legal activity. That did not make sense because it would mean someone such as a process server (or a courier or a Royal Mail employee) could not lawfully deliver a claim form. The other extreme was that *anyone* could undertake a reserved legal activity simply by being an agent of a litigant in person. If that were right, then the prohibition of all six of the reserved legal activities in the 2007 Act could be easily circumvented.

174. Davis LJ held in *Ndole* that *Gregory* v *Turner* (see [141] above) demonstrated that the second extreme was wrong. A litigant in person's right to conduct litigation could not be delegated under either the 1990 Act or the 2007 Act ([48]-[52]).

175. In relation to the first extreme, Davis LJ said that (i) *Agassi* had decided that service of a claim form was a task within the conduct of litigation (noting that *Ellis v Ministry if Justice* [2018] EWCA Civ 2686 reached the same conclusion) ([55]-[61]), (ii) *Agassi* at [43] had been correct to decide that the statutory prohibitions on the conduct of litigation were to be given a restricted ambit [55].

176. Davis LJ in *Ndole* concluded that a distinction was to be drawn between those who merely performed an administrative or mechanical function in connection with service and those who undertake or assume responsibility for it. That distinction meant that a postman would not commit an offence whereas, on the facts, CSD was taking responsibility for service, and would, therefore, commit an offence, unless it was authorised or exempt. It is worth setting out [67] and [68] of Davis LJ's judgment in full:

> "[67] In my view this is where substance has to prevail over form. I acknowledge that it is not always appropriate to talk in terms of degrees of agency. But it all depends. In my view the pragmatic solution here, which is the one proffered by Mr Darling, is the correct solution. **That distinguishes between those who merely perform an administrative or mechanical function in connection with service of documents and those who undertake, or who have assumed, legal responsibility with regard to service as prescribed by the rules**. This in fact, I consider, accords with the acceptance by the court in *Agassi* in paragraph 43 of the judgment that the statutory prohibition does not extend to "what might be termed purely clerical or mechanical activities." Thus the solution is to be found not so much in focusing on the issue of agency or sub-agency but in focusing on the actual role of, and the actual activity undertaken by, the person in question. That is why process-servers and the like are not within the statutory prohibition: they are simply engaged in the "mechanical" activity of actually delivering the claim form. Delivery, for these purposes, is not to be equated with service of a claim form as prescribed by the rules.

> [68] **The question thus becomes one of fact and degree in each case**. Ms Sinclair submitted that would lead to uncertainty. But as to that I strongly suspect that issues of the present kind with regard to service of a claim form are likely to be rare; and in the more general context of the right to conduct litigation, an approach permitting individual assessment of the activity undertaken in an individual case is, by reason of its very adaptability to the circumstances of the particular case, much more likely to achieve justice than a rigid application of an agency-based approach [emphasis added]."

177. The distinction being drawn in *Ndole* is not the same as the distinction in issue in the present case. *Ndole* is not concerned with setting the boundaries relating to tasks performed by unauthorised persons acting for and on behalf of authorised individuals. *Ndole* is also **not** authority for the proposition that the only circumstances in which an unauthorised person lawfully performs tasks within the ambit of the conduct of litigation is if those tasks are purely "administrative or mechanical functions". To repeat, *Ndole* said nothing about what an unauthorised person could lawfully do in relation to the conduct of litigation on behalf of an authorised individual.

178. The Law Society and the SRA submitted that *Ndole* was authority for the proposition that the question of whether a person performing a particular task is carrying on the conduct of litigation is a matter of fact and degree. That statement is, however, too compressed and wrong. *Ndole* decided that the question of whether an unauthorised person acting for a litigant in person was carrying on the conduct of litigation was a matter of fact and degree. The question was whether the task was purely mechanical or whether the unauthorised person had assumed responsibility for it. That, as I have said, is not the question here.

179. The Law Society is, however, correct to say that *Ndole* is authority for the proposition that a person only carries on the conduct of litigation if they assume responsibility for the tasks in question. That applies to **both** the *Ndole* situation, where a litigant in person uses the services of an unauthorised person even though there is no power to delegate the conduct of litigation, **and** to the situation in this case where an authorised individual, with the power to delegate, allows an unauthorised person to undertake tasks that amount to the conduct of litigation.

180. *Ndole*, is, therefore, supportive of the construction of the words "carry on the conduction of litigation" that I have adopted thus far. It will be noted that Davis LJ used the expression "legal responsibility" rather than just "responsibility". I prefer the term "responsibility", because it includes the formal responsibility referred to in *Ndole* as well as the collection of responsibilities of authorised legal professionals which are provided for in section 1 of the 2007 Act (see [30] above).

Bamrah v Gempride Ltd

181. *Bamrah v Gempride Ltd* [2018] EWCA Civ 1367, [2019] 1 WLR 1545 (*Bamrah*) (Hickinbottom and Davis LJ) was about wasted costs. In that case Hickinbottom LJ said at [103] that a solicitor on the record was liable for the acts and omissions of the people to whom he or she delegated "parts of the conduct of litigation", especially where the work was delegated to a non-authorised person. It was only in that way that

the supervisory jurisdiction of the court was maintained. *Bamrah* too is supportive of the construction of the words "carry on the conduct of litigation" that I have adopted.

Baxter

182. *Baxter* concerned an application for committal of a chartered legal executive and her company for breaching sections 14(1) and (4) of the 2007 Act. Neither was an authorised person. A landlord had engaged the legal executive in relation to possession proceedings ([211]-[223]). Cavanagh J made a comprehensive review of the authorities, including *Agassi* and *Ndole*. He held that section 14(1) had been contravened because the activities undertaken amounted to the conduct of litigation, but that the defence in section 14(2) applied ([224]-[234]). The legal test applied was at [184]-[185] and [194] and [200], where Cavanagh J held, applying the fact and degree test from *Ndole*, that the tasks that the legal executive had undertaken had not been purely mechanical ones, and that the legal executive had taken responsibility for those tasks, thereby carrying on the conduct of litigation on behalf of a litigant in person (who had no right to delegate those tasks).

183. APIL (supported by CILEX) submitted, as I have said, that *Baxter* had wrongly expanded the previously narrow ambit of the activities which amounted to the conduct of litigation. As mentioned already, I believe that APIL and others have misunderstood *Baxter*. The misunderstanding may be due in part to the headnote in the Weekly Law Reports which fails to make the distinction between the proper meaning of carrying on the conduct of litigation and the scope of tasks that constitute the conduct of litigation.

184. I broadly agree with Cavanagh J's analysis at [173]-[186] in *Baxter*, subject to the following three points. First, at [177], Cavanagh J mistakenly suggested that, before words were added by paragraph 4(1) of schedule 2 of the 2007 Act (see [40] above) to the definition of conduct of litigation in section 119 of the 1990 Act (see [138] above), the "ancillary functions" referred to in paragraph (b) of the section 199 definition referred only to those ancillary "to issuing proceedings". In fact, the definition referred to "ancillary functions in relation to proceedings", not just "issuing proceedings". Cavanagh J also wrongly thought that that point emerged from *Agassi*, which it did not. Secondly, at [182], Cavanagh J said that the insertion into the 2007 Act of the "reasonable lack of knowledge defence" in section 14(2) of the 2007 Act made "the grounds for a very strict and narrow construction [of the offence in section 14(1)] less compelling". I am not sure that I agree in circumstances where the scope of the definition of the conduct of litigation is also relevant to whether costs are recoverable (see, for example, *Agassi*). Thirdly, as in *Ndole*, the question of fact and degree is not whether an individual task is within the conduct of litigation, it is whether a person who has performed a task which is within the conduct of litigation, has assumed responsibility for it rather than undertaking the task as a mechanical action. Insofar as that was unclear in [184], it is made clear when Cavanagh J applied the principles at [192] and [193]. He did not apply "fact and degree" in deciding that particular steps, such as the delivery of the Reply, fell within paragraph 4(1) of schedule 2 to the 2007 Act. At [194], Cavanagh J correctly addressed the *Ndole* question, namely whether various steps were purely administrative or mechanical or whether the legal executives had assumed responsibility for them. There was no expansion of the scope of what tasks were within the scope of conduct of litigation. The conclusion, expressed at [200] in *Baxter*, is clear:

> "200 The Court of Appeal in *Ndole* considered the entirety of the actions undertaken by the consultants in that case when deciding that the service of documents was the conduct of litigation. Applying the same approach to the current case, I am satisfied, to the criminal standard, that the filing of the claim form and particulars of claim, and the arrangements made for service of the reply and defence by the respondents, amounted to the conduct of litigation."

185. Looking at *Baxter* from the point of view of the present case, there was no question that the legal executives could have undertaken the conduct of litigation tasks for and on behalf of an authorised individual who had delegated the performance of those tasks to them. But the legal executives in *Baxter* were working for a litigant in person whose rights to conduct of litigation were personal and could not be delegated. Cavanagh J decided that the legal executives had undertaken specific tasks within the conduct of litigation and that they had contravened section 14 (subject to the defence) because they had assumed responsibility for the tasks and they were not merely mechanical or administrative. That was a question of fact and degree. The fact the consultants had also given legal advice and assistance was relevant to that question.

186. *Baxter*, therefore, follows *Ndole* as I have described it above. *Baxter* is not authority for a wide approach to the list of tasks within the conduct of litigation.

iii) My conclusions on the proper meaning of carrying on the conduct of litigation

187. I have already summarised my overall conclusions on the first issue at [19]-[27] above. In essence:

i) There has always been a widespread and well-regulated practice of delegation by solicitors to unqualified individuals (see *Waterlow* at [123]-[126] above and *Hollins* at [142]-[144] above).

ii) The offence in section 14 of the 2007 Act (as for the one in section 70 of the 1990 Act) is to be interpreted narrowly (see *Agassi* at [149]-[151]). The 2007 Act did not make a significant change from the 1990 Act in this regard.

iii) The words "conduct of litigation" refer to the tasks to be undertaken, whilst the words "carry on" refer to direction and control of, and responsibility for, those tasks.

iv) *Ndole* and *Baxter* were cases decided in the context of an unauthorised person conducting litigation for a litigant in person. That is not this case. They also decided, however, that the question of whether a section 14 offence is committed is one of fact and degree and depends on whether the unauthorised person is taking responsibility for the tasks that amount to the conduct of litigation or whether the tasks are simply mechanical or administrative.

v) An unauthorised person may lawfully perform any tasks, which are within the scope of the conduct of litigation, for and on behalf of an authorised individual such as a solicitor or appropriately authorised CILEX member, provided the authorised individual retains responsibility for the tasks delegated to the

unauthorised person (both formal responsibility and the responsibilities identified at section 1(3) of the 2007 Act). In that situation, the authorised individual is the person carrying on the conduct of litigation.

vi) The delegation of tasks by the authorised individual to the unauthorised person requires proper direction, management supervision and control, the details of which are a matter for the regulators. The authorised individual must put in place appropriate arrangements. The degree of appropriate control and supervision will always depend on the circumstances. This is hardly surprising. It is described in the 1946 Managing Clerk's article (see [130]-[133] above) and recognised in the SRA's 2019 guidance on solicitor's supervision cited by the LCN in argument (see [104] above). It was also reflected in a passage in the SRA's 2022 Guidance on Effective Supervision cited by counsel for CILEX. The concept was also inherent in the distinction drawn by the SRA and adopted by the Law Society between cases in which prior approval was required and others in which it was not.

vii) The judge was wrong to distinguish between (a) supporting or assisting an authorised solicitor in conducting litigation, and (b) conducting litigation under the supervision of an authorised solicitor. Both activities are lawful in the circumstances I have explained. It is not unlawful for an unauthorised person to act for and on behalf of an authorised individual so as to conduct litigation under their supervision, provided the authorised individual puts in place appropriate arrangements for the supervision of and delegation to the unauthorised person.

G. The second issue: Acts that actually constitute conducting litigation

188. I recognise the sincerity of the plea for clarity in relation to the question of what acts or tasks are or are not within the conduct of litigation as that term is defined in the 2007 Act. Unfortunately, however, the arguments in this appeal have not equipped the court to attempt an exhaustive definition. There are a few points that can, however, be made.

189. I have explained what *Baxter* decided at [28] and [182]-[186] above. No more needs to be said about it here.

190. *R v AUH* [2023] EWCA Crim 6, [2023] 1 WLR 1399 (*AUH*) (Court of Appeal, Criminal Division, Lord Burnett CJ, Jay and Cutts JJ) is the most recent authority on the scope of the conduct of litigation. There the court held that a local authority was not able to prosecute consumer offences pursuant to its powers under the Consumer Rights Act 2015 otherwise than through an authorised lawyer ([80]-[90]). Neither the local authority nor its non-authorised employee, Mr Rumford, were exempt under the litigant in person provision at paragraph 2(4)(a) of schedule 3 to the 2007 Act. To hold otherwise, would drive a coach and horses through the regulatory regime of the 2007 Act [79]. At [75], the CACD held that Mr Rumford was, in prosecuting the proceedings in the Crown Court on behalf of the local authority, undertaking the "commencement, prosecution and defence of such proceedings" within paragraph 4(1)(b) of schedule 2 to the 2007 Act. The CACD also noted at [75] that an ancillary function within paragraph 4(1)(c) was not defined in the 2007 Act. The CACD repeated that, given the penal consequences, the definition had been interpreted narrowly. Following *Agassi*, the CACD said that purely clerical or mechanical activities were not within the conduct

of litigation and held (citing *Agassi* at [56]) that the reference to ancillary functions was intended to encompass formal steps required in the conduct of litigation.

191. I turn now to the three limbs of the definition of the conduct of litigation at paragraph 4 of schedule 2 to the 2007 Act. The first limb is "issuing proceedings before any court in England and Wales". This is tolerably clear and narrow. It refers to the process of starting court proceedings by issuing an originating document such as a claim form (see, for example, CPR Part 7.2(1)). The third limb in paragraph 4(1)(c) is "the performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions)". That third limb is also limited to formal steps (see *AUH* at [75] following *Agassi* at [55]-[56] at [146] above). One example is service of documents such as statements of case.

192. The scope of the second limb ("the commencement, prosecution and defence of such proceedings") in paragraph 4(1)(b) is less clear and cannot be resolved on this appeal. In *Ndole* at first instance, Coulson J held (at [29]) that preparing a witness statement was a critical step in the prosecution of civil proceedings and amounted to the conduct of litigation. Cavanagh J was of the same view in *Baxter* at [214], whilst noting there was another decision of the High Court going the other way (*Heron Bros v Central Bedfordshire* [2015] EWHC 1009 (TCC)).

193. The Law Society provided the court with a list of litigation work which it contended was unlikely to fall within the statutory definition of "conduct of litigation". I have identified 7 items from this list, which were neither challenged nor debated. They can, I think, be regarded as common ground (rather than the product of adversarial argument). The following are, therefore, unlikely to fall within the statutory definition of "conduct of litigation":

    i) Pre-litigation work. See *Heron Bros Ltd v Central Bedfordshire Council* [2015] EWHC 1009 (TCC).

    ii) Giving legal advice in connection with court proceedings: See *Agassi* at [56] and *JK v MK (E-Negotiation Ltd and another intervening)* [2020] EWFC 2, [2020] 1 WLR 5091 at [27].

    iii) Conducting correspondence with the opposing party on behalf of clients: See *Agassi* at [56].

    iv) Gathering evidence. See *Factortame* at [25] to [29].

    v) Instructing and liaising with experts and counsel. See *Factortame* at [28].

    vi) Signing a statement of truth in respect of a statement of case. See *O'Connor v Bar Standards Board* (unreported, 17 August 2012) at [27].

    vii) Signing any other document that the CPR permits to be signed by a legal representative, as defined by CPR Part 2.3.

H. The third issue: Is the law centres' model contrary to the 2007 Act?

194. The conclusions I have reached above are those which were urged on this court by the LCN. In those circumstances, it is not necessary to decide the fallback questions that

were raised by LCN about the scope of section 23 of the 2007 Act and whether the decision in *Khan* was correct (see [55], [104] and [169] above).

I. Conclusions

195. I have explained my conclusions at [19]-[31] and [187]-[194] above. Also, as I have said, I would allow CILEX's appeal against the judge's decision. In fact, the underlying proceedings between CRS as claimants and Mrs Mazur and Mr Stuart have been compromised.

196. As I have said at [31] above, the result reached by the judge was not surprising considering the arguments raised before him. In addition, both DDJ Campbell and HHJ Simpkiss were faced with shifting sands and arguments that were wrong and later abandoned. By way of example, the SRA's letter of 2 December 2024, relied on by HHJ Simpkiss, was wrong in law and contrary to the submission made to DDJ Campbell. It said, wrongly, that GBS was permitted to undertake "reserved activities" due to Section 21(3) of the 2007 Act (as to which, see [74]-[83] above). The SRA later reversed its position on section 21(3).

197. Mr Ashall's statement (see [67]-[71] above) included a clear statement that Mr Ashall was the person with the conduct of this litigation and, as a practising solicitor, he was an authorised person under the 2007 Act. There cannot, thereafter, have been any doubt that Mr Ashall bore the relevant responsibility for the proceedings and was carrying on the conduct of litigation, not Mr Middleton. Mr Ashall also gave evidence that he supervised Mr Middleton by meeting and speaking regularly on individual cases and having monthly face to face meeting to discuss his work. Mr Ashall confirmed that the conditions placed by the SRA on Mr Middleton's employment were complied with. In these circumstances, it is hard to see why this litigation went on as long as it did.

Lady Justice Andrews:

198. I agree. In essence, the question in any given set of circumstances will be whether the unauthorised person, in carrying out whatever tasks which fall within the scope of "conduct of litigation" have been delegated to him or her, is in truth acting on behalf of the authorised individual. If they are, it is the authorised individual who is conducting the litigation. But if the reality is that the litigation is not being conducted by the unauthorised person for and on behalf of the authorised individual, they will be committing an offence.

The Master of the Rolls:

199. I agree with both judgments.