

IN THE HIGH COURT OF JUSTICE
KINGS BENCH DIVISION

KA-2025-000012

On appeal from the Brighton County Court (HHJ Simpkins)

B E T W E E N:

(1) MRS JULIA MAZUR
(2) MR JEROME STUART

Appellants

-and-

CHARLES RUSSELL SPEECHLYS LLP

Respondent

SUBMISSIONS ON BEHALF OF
THE SOLICITORS REGULATION AUTHORITY

A. INTRODUCTION

1. These submissions are filed on behalf of the Solicitors Regulation Authority (the “**SRA**”) in accordance with paragraph 3 of the Court’s order of 5 June 2025 (the “**Order**”).
2. By the Order, the Court invited submissions from the SRA on the question of whether a non-admitted person employed by an authorised firm was permitted to:
 - (a) *...support an authorised solicitor in undertaking the reserved legal activity of conducting litigation?*
 - (b) *...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?*
3. As elaborated upon below, the answer to question (a) is ‘yes’; while the answer to questions (b) and (c) is ‘no’. The conduct of litigation is a reserved

activity, and so a person who is neither authorised nor exempt cannot lawfully engage in it. This is the case whether or not they are employed by a firm which is authorised.

4. However, non-admitted persons may assist or support authorised persons in the conduct of litigation; provided that final responsibility for the conduct of litigation rests with an authorised person. In such a case, the non-admitted person does not “conduct litigation” within the meaning of the Legal Services Act 2007 (the “2007 Act”) and so does not breach the prohibition referred to in the preceding paragraph.
5. These submissions are structured as follows:
 - 5.1. The legal framework pursuant to which the conduct of litigation is regulated;
 - 5.2. The application of the prohibition on performing reserved legal activities to non-authorised employees of authorised persons;
 - 5.3. The argument which has been made in these proceedings based on s. 21(3) of the 2007 Act;
 - 5.4. The support which non-authorised employees may provide to authorised persons; and,
 - 5.5. Briefly, the facts of the SRA’s prior involvement in this matter, including its decision not to investigate Goldsmith Bowers Solicitors (“GBS”).
6. For the purposes of these submissions, the SRA is neutral on the merits of the particular dispute between the parties, including whether, on the facts, Mr Middleton was conducting litigation; and what the Court should do about it if he was. The SRA respectfully considers these to be matters for the Court and the parties.

B. LEGAL FRAMEWORK

(1) Reserved Legal Activities

7. In common with other professional activities, the provision of certain legal services to the public is regulated by law. The 2007 Act lays down a list of

“reserved legal activities” which Parliament has determined may only be carried out by certain persons. The reserved legal activities are, pursuant to s. 12(1):

- (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.*

8. Pursuant to s. 14 (so far as relevant), it is a criminal offence for anyone not entitled by the 2007 Act to carry out these activities:

- (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.*
- (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.*
- (3) A person who is guilty of an offence under subsection (1) is liable–*
 - (a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine not exceeding the statutory maximum (or both), and*
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).*
- (4) A person who is guilty of an offence under subsection (1) by reason of an act done 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.*

9. S. 15 provides that the words *“carry on an activity”* (i.e., the words describing the conduct which is prohibited in s. 14) include conduct by an employee acting in the course of their employment. It provides (so far as relevant):

- (1) This section applies for the interpretation of references in this Act to a person carrying on an activity which is a reserved legal activity.*
- (2) References to a person carrying on an activity which is a reserved legal activity include a person (“E”) who–*
 - (a) is an employee of a person (“P”), and*
 - (b) carries on the activity in E's capacity as such an employee.*

(3) For the purposes of subsection (2), it is irrelevant whether P is entitled to carry on the activity.

10. It is also an offence for an employer to carry out reserved legal activities through an employee where that employee is not authorised pursuant to s.

16. That section provides (so far as relevant):

(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.

[...]

(4) In proceedings for an offence under subsection (1), it is a defence for the accused to show that the accused took all reasonable precautions and exercised all due diligence to avoid committing the offence.

11. Further, pursuant to s. 17, it is an offence to pretend to be entitled to perform reserved legal activities.

12. It is a matter of the highest public interest that those carrying out reserved legal activities are fit and proper persons who are appropriately qualified and regulated. This is necessary to secure public confidence in the administration of justice; to protect the public and consumers of legal services; to ensure high standards of competence and propriety in the profession; and to promote the enviable reputation of the English legal profession and legal system, amongst litigants both foreign and domestic.

(2) The Conduct of Litigation

13. The reserved legal activity which is relevant in this case is the "*conduct of litigation*". Schedule 2, paragraph 4 of the 2007 Act defines the conduct of litigation 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.

14. Whether particular steps amount to the “conduct of litigation” has been the subject of a number of decisions by the courts (some of which pre-date the 2007 Act).¹

(3) The Regime of Authorisation and Exemption

15. S. 13 of the 2007 Act states (so far as relevant):

(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.

16. Under the 2007 Act, there are therefore two ways in which a person may be “entitled” to perform reserved legal activities.

17. **First**, a person may be “authorised”, pursuant to s. 18, which provides:

(1) For the purposes of this Act “authorised person”, in relation to an activity (“the relevant activity”) which is a reserved legal activity, means–

(a) a person who is authorised to carry on the relevant activity by a relevant approved regulator in relation to the relevant activity (other than by virtue of a licence under Part 5), or

(b) a licensable body which, by virtue of such a licence, is authorised to carry on the relevant activity by a licensing authority in relation to the reserved legal activity.

¹ For reference, the SRA has identified the following decisions (without any claim to be exhaustive): Agassi v Robinson (Inspector of Taxes) (Bar Council intervening) [2005] EWCA Civ 1507, [2006] 1 All ER 900; Heron Bros Ltd v Central Bedfordshire Council (No 2) [2015] EWHC 1009 (TCC); Ellis v Ministry of Justice [2018] EWCA Civ 2686; Ndole Assets v Designer M&E Services [2018] EWCA Civ 2865; Gill v Kassam [2019] PNLR 3; Baxter v Doble [2023] EWHC 486 (KB), [2023] 1 WLR 2948; and R v AUH [2023] EWCA Crim 6, [2023] 1 W.L.R. 1399.

(2) A licensable body may not be authorised to carry on the relevant activity as mentioned in subsection (1)(a).

(3) But where a body ("A") which is authorised as mentioned in subsection (1)(a) becomes a licensable body, the body is deemed by virtue of this subsection to continue to be so authorised from that time until the earliest of the following events–

(a) the end of the period of 90 days beginning with the day on which that time falls;

(b) the time from which the relevant approved regulator determines this subsection is to cease to apply to A;

(c) the time when A ceases to be a licensable body.

(4) Subsection (2) is subject to Part 2 of Schedule 5 (by virtue of which licensable bodies may be deemed to be authorised as mentioned in subsection (1)(a) in relation to certain activities during a transitional period).

(5) A person other than a licensable body may not be authorised to carry on the relevant activity as mentioned in subsection (1)(b).

(6) But where a body ("L") which is authorised as mentioned in subsection (1)(b) ceases to be a licensable body, the body is deemed by virtue of this subsection to continue to be so authorised from that time until the earliest of the following events–

(a) the end of the period of 90 days beginning with the day on which that time falls;

(b) the time from which the relevant licensing authority determines this subsection is to cease to apply to L;

(c) the time when L becomes a licensable body.

18. By this provision, Parliament has entrusted the "relevant legal regulator" (which is the SRA for solicitors and their firms or licensable bodies) with the task of authorising persons to perform reserved legal activities. The SRA has published the "SRA Authorisation of Firms Rules" and "SRA Authorisation of Individuals Regulations" which set out how it will perform this function. The "SRA Assessment of Character and Suitability Rules" may also be relevant to the SRA's decision whether or not to authorise a person.

19. **Second**, a person may perform reserved legal activities if they are an exempt person pursuant to s. 19. A list of exempt persons is laid down in Schedule 3, by type of reserved legal activity. The SRA does not understand it to be suggested by anyone that an exemption under Schedule 3 applies in this case.

(4) The SRA's Regulatory Jurisdiction

20. Once a person is authorised to perform reserved legal activities by the SRA, they remain subject to the SRA's regulatory jurisdiction. The SRA is empowered to make rules governing the profession pursuant to (among others) the Solicitors Act 1974 (the "**1974 Act**") ss. 31 – 34B. In particular, s. 31(1) of the 1974 Act provides:

(1) Without prejudice to any other provision of this Part the Society may make rules for regulating in respect of any matter the professional practice, conduct, fitness to practise and discipline of solicitors and for empowering the Society to take such action as may be appropriate to enable the Society to ascertain whether or not the provisions of rules made, or of any code or guidance issued, by the Society are being, or have been, complied with.

21. As set out in more detail at paragraph 36 below, under the 2007 Act, pursuant to s. 21(1), these rules are referred to as "regulatory arrangements".

(5) Permission to Employ a Suspended Solicitor

22. If a solicitor has been suspended, the SRA's permission is required before a solicitor may employ them. Section 41 of the Solicitors Act 1974 provides (so far as relevant):

(1) No solicitor shall, except in accordance with a written permission granted under this section, employ or remunerate in connection with his practice as a solicitor any person who to his knowledge is disqualified from practising as a solicitor by reason of the fact that –

(a) his name has been struck off the roll, or

(b) he is suspended from practising as a solicitor, or

(c) his practising certificate is suspended while he is an undischarged bankrupt.

(1A) No solicitor shall, except in accordance with a written permission granted under this section, employ or remunerate in connection with his practice as a solicitor any person if, to his knowledge, there is a direction in force under section 47(2)(g) in relation to that person.

(1B) Where–

(a) a solicitor ("the employed solicitor") is employed by another solicitor in accordance with a written permission granted under this section, and

(b) the employed solicitor is disqualified from practising as a solicitor by reason of a fact mentioned in subsection (1)(b) or (c),

section 20(1) does not apply in relation to anything done by the employed solicitor in the course of that employment.

(2) The Society may grant a permission under this section for such period and subject to such conditions as the Society thinks fit.

C. NON-AUTHORISED EMPLOYEES OF AUTHORISED PERSONS

23. In the SRA's respectful submission, a person may not rely on their employer's authorisation to carry out reserved legal activities if that person is not themselves authorised, for at least the following reasons.
24. **First**, as a matter of plain language, the prohibition on carrying out reserved legal activities in the 2007 Act applies to such persons. S. 14 lays down a strict prohibition on anyone who is not "*entitled*" carrying out reserved legal activities. S. 13(1) provides that 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*"; and s. 13(2) then lays down two, exclusive, ways in which a person can be so "*entitled*" – by being authorised pursuant to s. 18, or by being exempt pursuant to s. 19. An individual who is not authorised or exempt is not "*entitled*" in accordance with s. 13 and cannot carry out reserved legal activities. The 2007 Act contains no exception to the prohibition for non-authorised employees of authorised persons.
25. **Second**, the 2007 Act makes specific provision for how the prohibition applies in the context of an employment relationship. Section 15(2) provides that reference to the carrying on of reserved legal activities includes the case where a person acts in their capacity as an employee. The effect of this section is that, when s. 14 prohibits a person from "*carry[ing] on an activity ... which is a reserved legal activity*" unless entitled, that prohibition applies to a person even if they are acting in their capacity as employee; and it applies, pursuant to s. 15(3), whether or not the employer is entitled to carry out the activity. This effect is explained in the Explanatory Notes as follows (at §70, emphasis added):

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.

26. **Third**, the 2007 Act expressly criminalises the performance of reserved legal activities by a non-authorised person under the purported cover of their employer's authorisation. S. 16 provides for a form of vicarious criminal liability for an employer, where an employee (E) carries out a reserved legal activity in their capacity as employee of a firm (P), and in doing so, E commits an offence under section 14. This provision is fatal to any suggestion that a non-authorised employee can carry out reserved legal activities as a result of the authorisation of their employer:

26.1. S. 16(2)(b) shows that it is possible for E to commit the s. 14 offence, despite acting in their capacity as employee of P, an authorised employer. That proposition alone is sufficient to dispose of the suggestion that employees may be entitled to carry out reserved legal activities under the authorisation of their employer. If they could be, it would be impossible for the criminal offence which is expressly anticipated by s. 16(2)(b), read with s. 16(1), to be committed.

26.2. But yet further, if E breaches the s. 14 prohibition, P may also have committed a criminal offence – indeed, unless it can show that it “*took all reasonable precautions and exercised all due diligence to avoid committing the offence*”, it will have done so. The offence is described in the Explanatory Notes (at §74) as follows (emphasis added):

This section provides that if an employer carries on a reserved legal activity through a manager or employee who is not entitled to carry on that activity, the employer will commit an offence, even if the employer is so entitled, unless the employer has taken all reasonable precautions and exercised all due diligence to avoid committing the offence. This offence carries a maximum penalty of an unlimited fine and/or two years' imprisonment.

26.3. The 2007 Act, therefore, does not permit a non-authorised employee to carry out reserved legal activities under their employer's authorisation. In fact, so objectionable was that possibility to Parliament that it decided to criminalise both the employer and employee, should such a circumstance occur.

27. **Fourth**, some of the exemptions under the 2007 Act permit the carrying out of certain specified reserved legal activities under the supervision of an

authorised person. Thus, for example, pursuant to Schedule 3, paragraph 1(7), a person is exempt in relation to the exercise of rights of audience if they are (a) “*an individual whose work includes assisting in the conduct of litigation*”; (b) the person is assisting in the conduct of litigation under instructions or supervision from an authorised person; and (c) the proceedings are of a certain type and being heard in chambers.² However, there is no such exemption for the conduct of litigation. Accordingly, (1) under the scheme of the 2007 Act, it is necessary for an exemption to be granted in such a case where a person is not authorised; and (2) Parliament has chosen to grant no such exemption in respect of the conduct of litigation (*c.f.* Schedule 3, paragraph 2).

28. **Fifth**, this conclusion received the support of the High Court in Solicitors Regulation Authority v Soophia Khan [2021] EWHC 3765 (Ch). In that case, a manager³ of a firm entitled to conduct litigation argued that she was entitled to carry out reserved legal activities through that firm, despite her practising certificate having been suspended. On an application by the SRA for an injunction to restrain her from doing so “*whether in her own name or the name of any other person or entity*”, the Court held that there are “*two layers of regulation...“the firm” and “the individuals”*” (§20). The Court held that s. 16 “*makes it clear that there is a separate requirement for the employer body and the employee to be entitled to carry on the reserved legal activity*” (§32). It is irrelevant that the firm’s entitlement in Khan stemmed from transitional provisions under s. 23 of the 2007 Act. The argument advanced in Khan was that an individual could carry out reserved legal activities without themselves being authorised if their firm was entitled to do so (see §23, §54), and that argument was rejected. It is also consistent with the approach of the Court of Appeal in R v AUH [2023] EWCA Crim 6, [2023] 1 W.L.R. 1399, §§78-79.

² It is important to note that this provision refers to “*assisting*” in the conduct of litigation, and does not itself give rise to an entitlement to conduct litigation.

³ Managers and employees are treated as the same for the purposes of entitlement under the 2007 Act: see s. 15(11).

29. Finally, although not strictly relevant to the question of the correct interpretation of the 2007 Act, the SRA wishes to bring to the Court's attention that this statutory position is reflected in SRA public documents:

- 29.1. The Authorisation of Firms Rules state at §5.3:

An authorised body may only carry on a reserved legal activity through a person who is entitled to do so.

- 29.2. The SRA's guidance on effective supervision states:

LSA 2007 makes no provision for unauthorised people to carry out litigation under supervision. Therefore people who are not themselves authorised to conduct litigation can only support authorised individuals to conduct litigation, rather than conducting litigation themselves under the supervision of an authorised individual.

30. Accordingly, the answer to questions (b) and (c) is 'no'. Whether or not supervised, and whether or not employed by an authorised person, anyone who wants to carry out reserved legal activities must be entitled to do so in accordance with the 2007 Act – and that means they must themselves be either authorised or exempt. If they are not, they cannot carry out reserved legal activities, and will, subject to any applicable defence, commit a criminal offence if they do so.

D. THE SECTION 21 ARGUMENT

31. It has been suggested by GBS that an entitlement for an employee to perform reserved legal activities may be derived from s. 21(3) of the 2007 Act. In the SRA's respectful submission, this is not correct.
32. This argument depends upon a conflation between "*regulated person*" (as defined in s. 21(3)) and "*authorised person*" (as defined in s. 18). However, these are not the same thing. While every authorised person is also a regulated person, not every regulated person is an authorised person. This is because the legal regulators are empowered to regulate not only authorised persons, but also (in certain circumstances) their non-authorised employees. When they do so, the non-authorised employees are "*regulated persons*", but not "*authorised persons*".

33. **First**, as a matter of its plain words, s. 21(3) merely defines the term “regulated persons” for the purposes of s. 21. It provides:

(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.

34. S. 21(3) does not in terms authorise the provision of reserved legal activities by a non-authorised employee of an authorised person. Indeed, s. 21(3)(b) expressly refers to persons who are not authorised. It does not refer to persons who are only authorised by virtue of the employer’s authorisation; which is what it might be expected to say if this provision were intended to extend authorisation to such persons.

35. **Second**, the 2007 Act must be read as a whole. In particular, s. 21 must be read with s. 18, which is the provision which does define who is authorised (and thus entitled) to carry out reserved legal activities. A provision which extended the employer’s authorisation to their employees would be found in s. 18, not s. 21.

36. **Third**, it does not follow from the definition in s. 21(3) that a “regulated person” is necessarily an “authorised person”. The term “regulated persons” is used from time to time in s. 21 to define certain types of rule which might apply to such persons. Thus (for example):

36.1. A body’s “regulatory arrangements” is defined in s. 21(1) as including “disciplinary arrangements in relation to regulated persons” and “any of its other rules or regulations (however they may be described), and any other arrangements, which apply to or in relation to regulated persons, other than those made for the purposes of any function the body has to represent or promote the interests of persons regulated by it”.

36.2. S. 21(2) specifies that “compensation arrangements” means (in effect) a redress arrangement for remediating “failure, on the part of regulated persons, to account for money received by them in connection with their activities as such regulated persons”.

- 36.3. S. 21(2) also defines “conduct rules”, “discipline rules” and “practice rules” as any rules or regulations relevant to conduct, discipline and practice applicable to “regulated persons”.
37. S. 21 refers to “regulated persons” (and not “authorised persons”) because the SRA is empowered to make “regulatory arrangements” which bind not only authorised persons, but also employees of authorised persons. For example. S. 34A(1) of the Solicitors Act 1974 provides:
- Rules made by the Society may provide for any rules made under section 31, 32, 33A or 34 to have effect in relation to employees of solicitors with such additions, omissions or other modifications as appear to the Society to be necessary or expedient.*
38. It is rules of this kind which apply to regulated persons falling within the category described in s. 21(3)(b). The statutory obligation to adhere to “regulatory arrangements” (whether or not a person is authorised) is laid down in s. 176, which provides (so far as relevant):
- (1) *A person who is a regulated person in relation to an approved regulator has a duty to comply with the regulatory arrangements of the approved regulator as they apply to that person.*
- (2) *A person is a regulated person in relation to an approved regulator if the person—*
- (a) *is authorised by the approved regulator to carry on an activity which is a reserved legal activity, or*
- (b) *is not so authorised, but is a manager or employee of a person who is so authorised.*
39. The 2007 Act therefore confers regulatory duties to adhere to the SRA’s “regulatory arrangements” on both “regulated persons”, and the subset of those regulated persons who are “authorised persons”. It does not, confer authorisation to carry out reserved legal activities on persons who are not authorised.
40. Accordingly, in the SRA’s respectful submission, GBS’s reliance on s. 21(3) to argue that Mr Middleton was entitled to conduct litigation is without merit as a matter of law.

E. SUPPORT FROM NON-AUTHORISED PERSONS

41. Question (a) asks whether a non-authorised person may “*support an authorised solicitor in undertaking the reserved legal activity of conducting litigation*”. This question arises in the context of submissions made by GBS, which assert that it is commonplace for certain functions (such as the taking of witness statements) to be done by non-authorised persons (see GBS Skeleton of 13 November 2024, §35b); and the observation of HHJ Simpkins that there is a “*widespread practice which most modern firms have of using employees who are not solicitors to carry out work*” (§37).
42. The starting point in answering this question is that a non-authorised person cannot conduct litigation. If what a person does falls to be characterised as conducting litigation as defined under the 2007 Act, then they must be entitled to perform that function under the 2007 Act in order to perform that function lawfully. However, if that person does not themselves conduct litigation, but merely supports another in doing so, then they will not fall foul of the prohibition.
43. The point at which assisting or supporting another in conducting litigation shades into conducting litigation oneself is a question of obvious practical importance for solicitors and their employees when decisions are taken about how work for a client is to be allocated and managed within firms (although by submitting as much, the SRA does not intend to submit that the case of Mr Middleton is a borderline one – that is a matter on which the SRA is neutral). The extremes are not difficult to imagine (a person who manages a litigator’s diary does not conduct litigation; while on the other extreme, a person who runs their own cases without supervision using the headed paper of an authorised person does). The difficult question raised by the Court’s question (a) is, at what point on the spectrum does a person cease to merely assist or support, and instead themselves become the person conducting litigation?
44. The conduct of litigation is defined by Schedule 2, paragraph 4 of the 2007 Act and has been considered in a number of decisions of the Court. However, so far as the SRA has been able to ascertain, there has been no previous case

considering directly at what point a non-authorised person ceases merely to support or assist an authorised person, and in fact assumes the conduct of litigation themselves.

45. The question must therefore be answered having regard to the text and purpose of the 2007 Act, as well as *“four key points of general principle”* identified in Baxter v Doble [2023] EWHC 486 (KB), [2023] 1 WLR 2948, §§181-184:
 - 45.1. The starting point must be the statutory language itself, and the statutory words must be given their natural and ordinary meaning;
 - 45.2. The legislation is penal in nature, and so in principle should be construed narrowly.
 - 45.3. Substance must prevail over form.
 - 45.4. The question is one of fact and degree in every case.
46. In the SRA’s respectful submission, when considering the question of whether a person is conducting litigation themselves or merely supporting another to do so, the key question is which person has assumed responsibility for the conduct of the litigation and exercises professional judgement in respect of it. It is that assumption of professional responsibility which is the hallmark of the conduct of litigation under the 2007 Act. Thus, in Ndole Assets v Designer M&E Services [2018] EWCA Civ 286, the Court of Appeal held that it could not possibly be right that *“no statutorily unauthorised person can assist at all in the performance of a reserved legal activity”*. Rather, in the context of service of documents, the key distinction was 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... 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”*.
47. The question before the Court today is different to that before the Court of Appeal in Ndole. In Ndole, the Court of Appeal was concerned to explain

why a person who merely delivered a claim form could not be said to be conducting litigation, which explains the reference to “*administrative or mechanical*” functions,⁴ which plainly could not describe (for example) the function of a paralegal creating the first draft of document.

48. The underlying principle, however, is the same. The hallmark of the conduct of litigation is the exercise of professional judgement, and taking responsibility for that judgement, and it is that which attracts the public policy imperative that the person so responsible be appropriately authorised and regulated.
49. For that reason, a non-authorised employee who assists a solicitor with conduct of litigation – even to a significant degree – by drafting litigation documents and letters, proofing witnesses, or similar functions – does not themselves conduct litigation, because it is the solicitor who exercises the final professional judgement about how the litigation is to be conducted, and takes responsibility for that judgement.
50. The position would however be different if, on a true analysis and having regard to the principles set out above (including, in particular, the requirement to elevate substance over form), the non-authorised person was not assisting or supporting a solicitor who had conduct of the litigation, but was rather themselves the one responsible for the litigation, and exercising professional judgement in respect of it. In that case, they could not be said to merely be supporting another person who is conducting litigation. They would be conducting litigation themselves, and if not authorised, would breach the prohibition in the 2007 Act.
51. Accordingly, the answer to question (a) is that, if, on a true analysis, the person in question was supporting another person, and had not assumed responsibility for the conduct of the litigation themselves, then that person would not fall foul of the prohibition in the 2007 Act.

⁴ This formulation’s pedigree goes back to Agassi v Robinson (Inspector of Taxes) (Bar Council intervening) [2005] EWCA Civ 1507, [2006] 1 All ER 900, where at §43 the Court stated: “It is common ground that [conducting litigation] does not extend to what might be termed purely *clerical or mechanical* activities such as photocopying documents, preparing bundles, delivering documents to opposing parties and the court and so on”.

52. For the purposes of these submissions, the SRA is neutral on whether Mr Middleton was in fact conducting litigation in this case.

F. THE INVOLVEMENT OF THE SRA IN THIS MATTER

53. The SRA's decision-making was relied upon by both GBS and HHJ Simpkins below. To assist the Court, the SRA wishes briefly to explain its decision-making.
54. On 18 November 2024, GBS self-reported to the SRA. It reported the concerns which had been raised by Ms Mazur and Mr Stuart, submitted that those concerns were vexatious, and relied upon s. 21(3) of the Legal Services Act 2007 to justify Mr Middleton's conduct. It enclosed, among other things, the Skeleton Argument of GBS dated 13 November 2024, which set out the detailed arguments which GBS relied upon.
55. On 2 December 2024, the SRA laid out in a *"Decision not to investigate"* that it would not be investigating the self-report further. It referred to GBS's submissions about s. 21 and stated that the SRA was *"satisfied Mr Middleton has not conducted a reserved legal activity without entitlement to do so, so are satisfied no further action is required"*.
56. On 17 December 2024, the Court below handed down its judgment. HHJ Simpkins relied upon the point that *"the SRA has confirmed that Mr Middleton had authority to conduct litigation under the supervision of Mr Ashall"* (§39). This point had been pressed before the judge in oral argument.
57. On 31 December 2024, Mr Stuart wrote to the SRA's General Counsel, contesting GBS's interpretation of s. 21 and asking the SRA to reconsider its decision not to investigate. The SRA then considered the matter internally. It concluded that, on the material before it, in circumstances where non-admitted staff can assist in the conduct of litigation and there were ongoing proceedings which would consider the circumstances in detail, the decision not to investigate would be maintained.
58. Upon receipt of the Order, the SRA reflected further on the merits of GBS's argument based on s. 21. The SRA has now concluded, for the reasons set

out in these submissions, that this argument is without merit (subject, of course, to the ruling of the Court in this appeal).

59. The SRA will now respectfully await the Court's judgment in this appeal, before deciding what steps it will take in respect of GBS and Mr Middleton.

G. CONCLUSION

60. The SRA reiterates its gratitude to the Court for the opportunity to make submissions. It stands ready to assist further in any way it can.

TOM LOWENTHAL

Blackstone Chambers

17 July 2025