



Neutral Citation Number: [2025] EWHC 2341 (KB)

Case No: KA-2025-000012

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/09/2025

Before :

MR JUSTICE SHELDON

Between :

(1)JULIA MAZUR
(2)JEROME STUART

Appellants

- and -

CHARLES RUSSELL SPEECHLYS LLP

Respondent

- and -

(1)THE SOLICITORS REGULATION
AUTHORITY
(2)THE LAW SOCIETY OF ENGLAND AND
WALES

Intervening
Parties

Ms Julia Mazur and Mr Jerome Stuart in person for the Appellants
Mr Paul Bennett (instructed by Goldsmith Bowers Solicitors) for the Respondent
Mr Tom Lowenthal (instructed by Solicitors Regulation Authority) for the First Intervening
Party
Russell-Cooke LLP for the Second Intervening Party

Hearing date: 20 May 2025

Approved Judgment

This judgment was handed down remotely at 10.00 am on 16 September 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE SHELDON

Mr Justice Sheldon :

1. Mrs Julia Mazur and Mr Jerome Stuart, the Appellants, appeal from the decision of His Honour Judge Simpkins, sitting at Brighton County Court, lifting the stay of proceedings brought by Charles Russell Speechlys LLP (the Respondent) and ordering the Appellants to pay costs in the sum of £10,653. Permission to appeal was granted on the papers by Martin Spencer J.

Background

2. The background to this matter is that the Respondent, a law firm, carried out some legal work for the Appellants. The Respondent's fee of £54,263.50 was not paid and another law firm, Goldsmith Bowers Solicitors ("GBS"), was instructed to recover the debt. A claim was issued by GBS, in response to which the Appellants put in a Defence and Counterclaim. The Claim Form was signed by GBS and the Particulars of Claim by Peter Middleton "Head of Commercial Litigation" at GBS.
3. The Appellants took issue with the fact that Mr Middleton, the person who they believed was conducting the litigation against them, did not hold a current practising certificate. The Appellants made an application for directions, including an order directing the Respondent to replace Mr Middleton with a qualified solicitor. The application was opposed by the Respondent.
4. Acting on his own motion, Deputy District Judge Campbell ordered a stay of the proceedings. He considered that there was evidence that Mr Middleton was taking part in "reserved activity" within the meaning of the Legal Services Act 2007 ("the LSA"), in that he appeared to be conducting litigation against the Appellants. Among other things, Deputy District Judge Campbell stated that "There is no indication that anyone else at Goldsmith Bowers is in any way involved" in the litigation. Deputy District Judge Campbell made an order that any application to lift the stay had to be supported by a statement from a partner giving a full explanation of the position. If no application was sought within 3 months, the claim would automatically be struck out.
5. An application was made by the Respondent to lift the stay. This came before His Honour Judge Simpkins. The initial hearing of the application was adjourned, and further submissions were made on 17 December 2024. In the meantime, on 2 October 2024, Mr Middleton's involvement with the proceedings came to an end and he was replaced by Lisa Adkin, a qualified solicitor with a practising certificate. On 18 November 2024, Mr Robert Ashall, a director at GBS, made a self-report to the Solicitors Regulatory Authority ("the SRA") in connection with Mr Middleton's

employment and the conditions attached thereto. On 2 December 2024, the SRA decided not to investigate GBS/Mr Middleton.

6. At the hearing before His Honour Judge Simpkins, the Respondent was represented by Mr Higgins of Counsel, and Mr Bennett, a Solicitor-Advocate. Mr Bennett submitted that Mr Middleton was entitled to perform the work that he had done on the case. He contended that Mr Middleton was deemed to be an authorised person to conduct litigation as a result of section 21(3)(b) of the LSA, being an employee of GBS which was “a regulated body being duly authorised”. Mr Bennett argued that this was supported by what the SRA had said in the letter of 2 December 2024:

“[GBS’] employees are permitted to undertake reserved legal activities due to section 21(3). We are satisfied that Mr Middleton has not conducted reserved legal activity without entitlement to do so”.

7. Mr Stuart made submissions on behalf of the Appellants. He contended that the SRA’s letter had wrongly construed section 21(3) of the LSA. An employee of an authorised person was not entitled to carry out reserved legal activities (including the conduct of litigation) unless they were also authorised. Section 21 of the LSA dealt with the remit of regulation; subsection 3(b) simply defined the persons who can be regulated by the SRA but it did not give them the entitlement to conduct litigation.
8. His Honour Judge Simpkins was referred by the parties to a witness statement from Mr Ashall. In this statement, Mr Ashall accepted that Mr Middleton was “not entitled to conduct any reserved activity as defined in the [LSA]”. Mr Ashall explained that the work that had been performed by Mr Middleton in relation to the proceedings had been done “under my supervision”. The actions performed by Mr Middleton were listed as follows:

- Received instructions from the Claimant;
- Provided initial advice;
- Drafted and sent Letter of Claim;
- Engaged in pre-action correspondence with the Defendants;
- Received instructions to issue proceedings;
- Drafted Claim Form through Goldsmith Bowers’ Money Claim Online account and submitted to Court.
- Drafted, filed and served Particulars of Claim;
- Received Notice of Issue;
- Arranged appropriate diary entries in relation to time limits;
- Received Defence and Counterclaim;

- Took further instructions in relation to Defence and Counterclaim;
- Drafted Reply and Defence to Counterclaim;
- Filed and served Reply and Defence to Counterclaim;
- Received Defendant's first Part 18 Request, considered and advised in respect of the same;
- Received Notice of Allocation;
- Completed Directions Questionnaire;
- Drafted directions;
- Filed and served Directions Questionnaire and draft Directions;
- Received Notice of Hearing of the Defendants Application;
- Provided advice/took instructions in relation to the Defendants' Application;
- Instructed Counsel and provided papers;
- Drafted Witness Statements Robert Ashall/Jonathan Whitehead;
- Drafted Statement of Costs;
- Arranged for filing and service of the Statement of Costs;
- Received Defendant's Second Part 18 Request considered and advised in respect of the same.
- Drafted Reply to Defendant's Second Part 18 Request.
- Arranged service of Reply to Second Part 18 Request.
- Internal discussions and meetings between Robert Ashall and Peter Middleton throughout".

9. Mr Ashall also explained that:

"In submitting the Claim to Money Claim Online and thereby issuing proceedings Peter was supporting me in the conduct of litigation. As a firm specialising in commercial debt recovery, GBS employs a number of non-authorized 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".

10. His Honour Judge Simpkins decided to lift the stay. He also decided that the Respondent should file an amended Claim Form and Particulars of Claim verified with a statement of truth signed in the name of an individual at GBS who was duly authorised to do so. Further, that the claim would be allocated to the Intermediate Track, complexity band 4. (The claim had provisionally been allocated to the Intermediate Track on 1 December 2023: this was referred to in the judgment of His Honour Judge Simpkins at paragraph 4). The Appellants were also ordered to pay the Claimant's costs of the application to lift the stay, summarily assessed in the sum of £10,653.
11. In his judgment, His Honour Judge Simpkins set out a number of provisions from the LSA: in particular, section 21(3). The learned judge also referred to a number of authorities which had dealt with similar matters: Baxter v Doble [2023] EWHC 486 and Solicitors Regulation Authority v Khan [2021] EWHC 3765 (Ch). His Honour Judge Simpkins noted that in neither of those cases did the Courts address section 21(3) of the LSA.
12. The nub of His Honour Judge Simpkins' reasoning was set out at paragraphs 38-41:

“38. I have decided that it is undesirable and unnecessary for me to decide whether *Khan* is distinguishable from Mr. Justice Fancourt's judgment, that even where the employer is regulated by the SRA, there is at the very least a grey area as to what activities can be done by its unqualified staff.

39. There are two reasons which it is unnecessary for me to make a decision. Firstly, it is now clear that there is no question of any breach of the LSA in the conduct of this litigation following the changes which Mr. Ashall's sets out in his witness statement even if there was before; and, secondly the SRA has confirmed that Mr. Middleton had authority to conduct litigation under the supervision of Mr. Ashall.

40. Following a complaint, on 2nd December 2024 the SRA handed down a decision not to investigate the conduct of Goldsmith in relation to Mr. Middleton. The relevant section of the decision reads as follows:

“Goldsmith Bowers Ltd is authorised under the Legal Services Act 2007 arrangements as it is a firm authorised and regulated by the SR[A] 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 that 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.”

41. The decision also makes clear that on 18th May 2022 the SRA granted an application to vary the approval of Mr. Middleton's employment as a Senior Litigation Executive subject to conditions, one of them being that his work would be

directly supervised by Mr. Robert Ashall. This was long before the Defendants ever made this point. The decision said that there were no concerns about Mr. Ashall's supervision".

The Appeal

13. The Appellants have appealed against the Order of His Honour Judge Simpkins. In the Appellant's Notice, it was stated that they wished to appeal against the order that they pay the Respondent's costs. The Appellants explained that:

"In substance, this is not an appeal against costs. This is an appeal against the underlying decision. . . . The learned judge decided that [Mr Middleton] was entitled [to conduct litigation (a reserved legal activity under the Legal Services Act 2007)]. The learned judge decided that he was so entitled and ordered us to pay costs. This decision is wrong in law".
14. In their Grounds of Appeal, the Appellants contend that the decision was wrong in law in that His Honour Judge Simpkins had:
 - i) misdirected himself on section 21(3) of the LSA;
 - ii) failed to take into account sections 14 and 16 of the LSA;
 - iii) misinterpreted the judgment given by Fancourt J in Khan;
 - iv) failed to take into account the judgment given by Andrews J in Jetly v Secretary of State for the Home Department [2019] EWHC 204 (Admin);
 - v) failed to take into account the representations made by the Law Society to the Court in Baxter;
 - vi) carried out a summary assessment of costs in breach of CPR 45.63;
 - vii) awarded costs in breach of the indemnity principle; and
 - viii) awarded costs, which are not recoverable under CPR Part 45.8.
15. In essence, the Grounds of Appeal can be broken down into two core points: (i) did His Honour Judge Simpkins err in deciding that Mr Middleton was authorised to conduct litigation under the supervision of Mr Ashall; and (ii) did His Honour Judge Simpkins err in making an award of costs, or making an award in the amount of £10,653, against the Appellants.
16. At the appeal hearing before me, Mrs Mazur represented the Appellants, with Mr Stuart following on with some very brief submissions. Mr Bennett represented the Respondent. I commend all of those who advocated before me for the clarity of their submissions. In particular, I wish to say that Mrs Mazur, who is not a practising lawyer, made submissions on the law which were of a very high quality.

Submissions by the parties

(i) Was Mr Middleton entitled to conduct litigation under the supervision of Mr Ashall?

17. With respect to the question as to whether Mr Middleton was entitled to conduct litigation under supervision of Mr Ashall, Mrs Mazur submitted that this was not permitted by the LSA. Mrs Mazur pointed out that there was no provision in the LSA that could be interpreted as enabling an unauthorised person to conduct litigation under the supervision of an authorised person. Section 21 of the LSA was concerned with the regulatory remit of the SRA (and other regulatory bodies), and subsection (3) was merely bringing within the scope of that regulatory remit employees of authorised persons. Mrs Mazur pointed out that this was the way in which the SRA described the matter in guidance to solicitors:

“Reserved legal activities – litigation

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”.

18. Mrs Mazur accepted that Mr Middleton had done everything under supervision; that was what Mr Ashall had said in his witness statement and the Appellants could not go behind that. Nevertheless, Mrs Mazur submitted that it was clear that Mr Middleton was not simply supporting Mr Ashall in conducting litigation.
19. For the Respondent, Mr Bennett submitted that there was no need for the Court to make a decision on whether Mr Middleton had been entitled, under the LSA, to carry out the activities that he had performed. The matter had moved on by the time of the hearing before His Honour Judge Simpkins given the replacement of Mr Middleton with Lisa Adkin. This was reflected in the first part of the judgment at paragraph 39 where it was stated that “it is now clear that there is no question of any breach of the LSA in the conduct of this litigation following the changes which Mr. Ashall’s sets out in his witness statement even if there was before”. Furthermore, the learned judge had permitted the Respondent to amend its Claim form and Particulars of Claim, and this was set out in the Order. This would correct any alleged invalidity of the initial pleadings.
20. Mrs Mazur accepted that the matter had moved on by the time of the hearing before His Honour Judge Simpkins and did not take issue with the learned judge’s ruling in the first part of the judgement at paragraph 39. Nevertheless, that did not mean that the legal issue about Mr Middleton’s entitlement to conduct litigation was no longer relevant. The Claim Form had been wrongly issued against the Appellants, and no application had been made for relief from sanctions by the Respondent. Had such an application been made, Mrs Mazur submitted that the Appellants would have been entitled to their costs up until that point.
21. Mr Bennett submitted that, insofar as the Court did wish to consider the LSA, Mr Middleton was entitled to conduct litigation under the supervision of Mr Ashall. The

statutory term “conduct of litigation” had a narrow definition, and section 21(3) of the LSA authorised Mr Middleton, as an employee of an authorised person, to carry out reserved legal activity under the authorised entity’s supervision.

22. In any event, Mr Bennett contended that the SRA had permitted Mr Middleton to operate in support of litigation. Mr Bennett pointed out that the conduct of litigation under supervision had been permitted before the LSA was enacted and the LSA did not purport to change the existing law. Mr Bennett referred in this regard to the observations of the editors of *Cordery on Legal Services* where it is stated that:

“There is, however, no equivalent exemption for persons conducting litigation under the supervision of a person who is authorised to do so. The absence of such a provision is curious. As set out above, the scope of the reserved legal activity of litigation is narrow. It may be that those drafting the LSA 2007 did not consider such an exemption was necessary because the conduct of litigation under supervision was always permitted and the LSA 2007 did not purport to change the pre-existing law. Such an approach would reflect the practical reality both before and after the LSA 2007. It would also be permissible under the LSA 2007 because the offence in question under Section 14 is to ‘carry on’ a reserved activity. The phrase is ambiguous as to whether it means personally undertake or oversee. In addition, the paragraph 1(7) exemption in relation to rights of audience seems to recognise that it is possible for unauthorised persons to act on instructions from a person who is authorised to conduct litigation.”

23. Mr Bennett also referred to CPR Part 2.3 which contemplates that employees of solicitors can have a role in the conduct of litigation, as the definition of “legal representative” includes a “solicitor’s employee who has been instructed to act for a party in relation to proceedings”.

Representations from the Law Society and Solicitors Regulation Authority

24. At the end of the hearing before me, it seemed that some of the legal issues being raised on this appeal may be of wider significance. As a result, I adjourned the hearing and invited the Law Society and Solicitors Regulation Authority to make representations to the Court on the following questions:

“Pursuant to the Legal Services Act 2007, 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 Solicitors Regulatory Authority:

- 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?"
25. The Law Society made written submissions through solicitors, Russell-Cooke LLP. The short answer to the questions posed was that a person who is not individually authorised but who is employed by an authorised entity:
- “a) is permitted to support an authorised solicitor in undertaking the reserved activity of conducting litigation;
 - b) is not permitted to undertake reserved legal activity even under the supervision of an authorised solicitor except in relation to specific activities which were permitted prior to 2007 or are otherwise specifically permitted;
 - c) is not permitted by virtue of the authorisation of their firm to undertake the reserved legal activity of conducting litigation themselves as an employee of the regulated entity”.
26. The Law Society’s analysis of the legal framework was as follows. There are certain activities among the services that have traditionally been supplied by solicitors that may only be carried on by persons who have been authorised to do so, or who are exempt under the LSA. “Reserved legal activities” (as referred to at section 12(1) of the LSA) can only be carried out by those authorised to do so, this includes “the conduct of litigation”. This is defined in paragraph 4 of Schedule 2 to the LSA as:
- “(a) the issuing of proceedings before any court in England and Wales,
 - (b) the commencement, prosecution and defence of such proceedings, and
 - (c) the performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions)”.
27. Reference was made to R v AUH [2023] EWCA Crim 6 where Lord Burnett of Maldon CJ observed at [75] that:
- “given the potential penal consequences of conducting litigation when not authorised to do so, it has been interpreted narrowly and does not extend beyond formal steps in the litigation. It does not extend to “purely clerical or mechanical activities” and is intended to encompass “formal steps required in the conduct of litigation””.

28. The Law Society also referred to the fact that the LSA introduced the words “the commencement, prosecution and defence of such proceedings” which had not been included in the previous legislation.
29. The Law Society submitted that whether or not a person supporting or assisting a solicitor to conduct litigation is conducting litigation themselves is a question of fact and degree. Indicators may include the way that important decisions in the case are taken; who drafts or specifically approves formal documents; the degree of direction from the authorised person; evidence as to who is taking specific responsibility for formal steps or, in general terms, who is conducting the case. It is expected that those providing support will be properly directed and supervised. Tasks may be delegated but conduct of the litigation may not. General supervision by an authorised person does not mean that an unqualified individual is, or is not, conducting litigation. The Law Society contended that the service of process, preparing bundles and searches are “mechanical functions”, and have never been regarded as ancillary steps amounting to the conduct of litigation.
30. Reference was also made to Baxter as being the best up to date statement of the correct approach. In that case, Cavanagh J noted at [176] that there was a category of legal activity which did not amount to a reserved activity, referring to sections 12 and 13 of the LSA. Cavanagh J observed at [177] that the definition of conduct of litigation at paragraph 4 of Schedule 2 to the LSA was wider than the earlier statutory definition. Under the LSA, the conduct of litigation includes functions which are ancillary to the commencement, prosecution, and defence of proceedings before any Court in England and Wales.
31. The Law Society referred to the SRA’s *Authorisation of Individuals Regulations* which provide at paragraph 9.1 that a solicitor with a practising certificate was “entitled to carry on all reserved legal activities except notarial activities”. Further, that the SRA’s *Authorisation of Firms Rules* provide at paragraph 5.3 that “An authorised body may only carry on a reserved legal activity through a person who is entitled to do so”. The Law Society contended that an employee conducting litigation is not exempt even if their employer would be exempt.
32. With respect to the LSA, the Law Society submitted that both the employer and employee need authorisation, and the authorisation of the employer does not authorise an employee to conduct litigation. With respect to body corporates, the Law Society submitted that a party which is a body corporate must act through a natural person as its representative. If that representative is required to conduct litigation they must be authorised to do so or be exempt. Where, therefore, pursuant to CPR Part 39.6 a Court gave permission to a company being represented at trial by an authorised employee, they would be exempt.
33. With respect His Honour Judge Simpkins’s finding at paragraph 39 that, by approving Mr Middleton’s employment, “the SRA has confirmed that Mr Middleton had authority to conduct litigation under the supervision of Mr Ashall”, the Law Society submitted that this was wrong. The SRA’s permission was required for Mr Middleton to be employed, but the SRA did not have power to authorise him to conduct litigation.

34. With respect to section 21(3) of the LSA, the Law Society submitted that a “regulated person” cannot be equated with “authorised person”. Not every “regulated person” is an “authorised person”, and for the purpose of carrying out reserved activities the relevant term is “authorised person”.
35. The Law Society concluded their submissions by saying that non-qualified staff play an important role in supporting the conduct of litigation by authorised solicitors. Their work, however, must not cross the boundary into conducting litigation which may only be done by authorised persons. The principle that authorised individuals should be in control of and have responsibility for litigation is in the public interest. An authorised entity which provided a platform for unauthorised staff to conduct and control litigation would not be in the public interest.
36. Tom Lowenthal of Counsel made written submissions on behalf of the SRA. With respect to the questions set out at paragraph 24 above, (a) was answered in the affirmative, and (b), (c) were answered in the negative. It was stated that the conduct of litigation is a reserved activity, and a person who is neither authorised nor exempt cannot lawfully engage in the conduct of litigation even if they are employed by a firm which is authorised to do so. 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”.
37. The SRA explained that it was 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, among other things, to secure public confidence in the administration of justice, to protect the public and consumers of legal services, and to ensure high standards of competence and propriety in the profession.
38. The SRA contended that under the LSA there are two ways in which a person may be entitled to perform reserved legal activities: they may be “authorised” pursuant to section 18 of the LSA, and the task of authorisation falls to the SRA; or they be an “exempt” person pursuant to section 19. When the SRA authorises a person to perform reserved legal activities they are subject to its regulatory jurisdiction. If a solicitor has been suspended, the SRA’s permission is required before a solicitor may employ them.
39. The SRA submitted that a person may not rely on their employer’s authorisation to carry out reserved legal activities if they are not authorised themselves. This was what the various provisions of the LSA called for. This was also supported by the decision of Fancourt J in Khan, where it was held at [32] that section 16 of the LSA 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”.
40. The SRA rejected the submission that an entitlement for an employee to perform reserved legal activities could be derived from section 21(3) of the LSA. That submission conflated the terms “regulated person” and “authorised person”, but they were not the same thing. Not every regulated person is an authorised person.

41. The SRA was not able to identify a case in which a Court had to consider directly at what point a non-authorised person ceases merely to support or assist an authorised person but assumes the conduct of litigation. The SRA suggested that the matter could be determined by having regard to the text and purpose of the LSA as well as “four key points of principle” identified by the Court of Appeal in Baxter at [181]-[184]: (i) the starting point must be the statutory language itself, and the statutory words must be given their natural and ordinary meaning; (ii) the legislation is penal in nature, and so in principle should be construed narrowly; (iii) substance must prevail over form; and (iv) the question is one of fact and degree in every case.
42. The SRA stated that the key question to ask was whether the person has assumed responsibility for the conduct of the litigation and exercises professional judgment in respect of it. The SRA submitted that 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 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. That would be different, however, if on a true analysis and focusing on substance not form the non-authorised person was the one responsible for the litigation and exercising professional judgment in respect of it.
43. I permitted the parties to the appeal to make further submissions in light of the representations from the Law Society and SRA. Both parties took up this opportunity. Mrs Mazur submitted that, in deciding whether Mr Middleton was conducting litigation himself or was merely supporting Mr Ashall, the Court was entitled to focus on his actual role and on the actual activities undertaken by him. The greater the similarity of a person’s role to that of an authorised person conducting litigation, the more likely that they are conducting litigation. In this case, it was contended that Mr Middleton had given “full-service assistance” to the Respondent.
44. Mrs Mazur also invited the Court to refer Mr Middleton and Mr Ashall to the SRA for further investigation. Mrs Mazur also invited the Court to direct the Respondent to repay the costs that had been paid, along with interest and the costs of this appeal. Mrs Mazur also invited the Court to strike out the Respondent’s claim as an abuse of process.

(ii) Was the learned judge entitled to award costs against the Appellants?

45. On the question of costs, Mrs Mazur submitted that at the time of the hearing before His Honour Judge Simpkins, the proceedings were subject to CPR Part 45, as they consisted of a claim which was or would normally be allocated to the Intermediate Track. In the circumstances, if the Respondent had wished to claim costs at the conclusion of the hearing, they should have filed a completed Precedent U form. That was not done. Instead the Respondent submitted two cost statements on Form 260. The costs claimed for were fees charged by Mr Bennett (£7,053 and £3,600) and the application fee. The first set of fees related to GBS, and the Appellants could not be liable to pay this. Further, in any event, as the hearing was an interim one, the recoverable costs was limited to a fixed cost of £333 plus the application fee of £303, in accordance with CPR 45.8.

46. Mr Bennett submitted that His Honour Judge Simpkins had been entitled to make the costs order that he did. The Respondent was successful at the hearing. That hearing was not conducted under CPR Part 45 as the claim had not been allocated to the Intermediate Track until His Honour Judge Simpkins made an order at the end of the hearing itself. Further, Mr Bennett submitted that he was instructed by the Respondent and GBS jointly, and not by GBS as the Appellants had suggested.

Discussion

47. It is necessary for me to determine the two core points that were made by the Appellants, as set out at paragraph 15 above. Whilst I accept that the first limb of His Honour Judge Simpkins's judgment at paragraph 39 was that the application to lift the stay would be granted because matters had moved on as Mr Middleton was no longer involved in the litigation, it is clear that the learned judge made the award of costs against the Appellants primarily because of the arguments under the LSA. His Honour Judge Simpkins did not provide written reasons for making his award of costs, nevertheless the transcript of the hearing on 17 December 2024 (after judgment had been given and the learned judge was dealing with the terms of the Order) quotes the learned judge as saying in the context of costs that the Appellants "raised this point and you lost". The reference to "this point" was clearly to the arguments under the LSA.

(i) Was Mr Middleton entitled to conduct litigation under the supervision of Mr Ashall?

48. The short answer to this question is "no": Mr Middleton was not entitled to conduct litigation under the supervision of Mr Ashall. The learned judge's conclusion to the contrary, in reliance on the SRA's letter of 2 December 2024, was therefore an error of law.
49. In their submissions to this Court, the SRA have disavowed the suggestion that this was permitted by section 21(3) of the LSA. They were right to do so. Mere employment by a person who is authorised to conduct litigation is not sufficient for the employee to conduct litigation themselves, even under supervision. The person conducting litigation, even under supervision, must be authorised to do so, or fall within one of the exempt categories. In my judgment, this is the proper construction of the LSA.
50. The LSA sets out a framework for the regulation of persons who carry out certain legal activities. Section 12 defines "reserved legal activity" as including at subsection (1)(b) "the conduct of litigation". This is further defined at paragraph 4 of Schedule 2 to the LSA:

"(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).”

51. Section 13(1) of the LSA provides that whether or not a person is entitled to carry on a reserved legal activity “is to be determined solely in accordance with the provisions of this Act”. Section 13(2) provides that a person is entitled to carry out a reserved legal activity where they are “an authorised person in relation to that activity” or “the person is an exempt person in relation to that activity”. There are, therefore, two distinct circumstances in which a person is entitled to carry out a reserved legal activity: they are an “authorised person” (which is defined at section 18), or they are an “exempt person” (which is defined at section 19).

52. If a person carries on a reserved legal activity without being entitled to do so, this is a criminal offence: section 14(1) of the LSA. Section 15 of the LSA provides that:

“(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.

(4) P does not carry on an activity (“the relevant activity”) which is a reserved legal activity by virtue of E carrying it on in E's capacity as an employee of P, unless the provision of relevant services to the public or a section of the public (with or without a view to profit) is part of P's business.

(5) Relevant services are services which consist of or include the carrying on of the relevant activity by employees of P in their capacity as employees of P. . . .”

53. Section 15(2) of the LSA makes it clear that an employee (referred to as “E”) who carries on the activity as an employee is to be treated as a person carrying on the reserved legal activity, whether or not their employer (referred to as “P”) is entitled to carry on that activity. Section 15(3) deals with the circumstances in which P will be treated as carrying on the reserved legal activity by virtue of E carrying it on in their capacity as an employee of P.

54. Section 16 of the LSA provides that:

“(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.

(3) If P is a body, references in subsection (2) to an employee of P include references to a manager of P. . .”

In other words, when E commits an offence under section 14 when carrying out a reserved legal activity P will also be committing an offence, even if P is entitled to carry on the relevant activity.

55. It is clear from sections 15 and 16 that the LSA separates out the entitlement of employees (E) to carry out reserved legal activities from that of their employer (P). If E was entitled to carry out reserved legal activities merely because they worked for P, section 16 would make no sense.

56. Section 18 of the LSA defines the term “authorised person”. For present purposes, the relevant subsection is (1)(a):

“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”.

The SRA is a relevant approved regulator in relation to the conduct of litigation. It is necessary, therefore, for a person to be authorised to carry on the relevant activity by the SRA.

57. Section 19 of the LSA defines the term “exempt person” by referring to Schedule 3 to the LSA. Schedule 3 provides that 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 in a number of circumstances, including if they have “a right to conduct litigation granted by a court in relation to those proceedings” (paragraph 2(2)), or if they have “a right to conduct litigation in relation to those proceedings granted by or under any enactment” (paragraph 2(3)).

58. Sections 20 and 21 of the LSA deal with approved regulators. Section 20(6) provides that:

“An approved regulator may authorise persons to carry on any activity which is a reserved legal activity in respect of which it is a relevant approved regulator.”

59. Section 21 of the LSA provides that:

“(1) In this Act references to the “regulatory arrangements” of a body are to

(a) its arrangements for authorising persons to carry on reserved legal activities,

(b) its arrangements (if any) for authorising persons to provide immigration advice or immigration services,

(c) its practice rules,

(d) its conduct rules,

(e) its disciplinary arrangements in relation to regulated persons (including its discipline rules),

(2) In this Act –

. . .

“conduct rules”, in relation to a body, means any rules or regulations (however they may be described) as to the conduct required of regulated persons;

“discipline rules”, in relation to a body, means any rules or regulations (however they may be described) as to the disciplining of regulated persons; . . .

“practice rules”, in relation to a body, means any rules or regulations (however they may be described) which govern the practice of regulated persons;

. . .

(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”.

60. Section 21 of the LSA is concerned with “regulatory arrangements”. Section 21(3) defines “regulated persons” as that term is used in the section – for purposes such as the regulator’s “practice rules”, “conduct rules”, “discipline rules”. The definition of “regulated persons” includes (a) “persons who are authorised by the body to carry on an activity which is a reserved legal activity”, and (b) “persons who are not so authorised, but are employees of a person who is so authorised”. In other words, persons who are subject to a regulator’s various rules will be those who are “authorised” by the regulator to carry out reserved legal activities and employees of such a person.

61. Section 21(3), on its face, is not extending the definition or scope of who is “authorised” to carry out reserved legal activities, but is saying that for the purposes of *regulation* there are two categories: persons who are authorised to carry out reserved legal activities and their employees. In other words, employees of an authorised person can be regulated.
62. The natural reading of section 21(3) of the LSA – that it is defining who is subject to the regulatory authority of a body such as the SRA, and does not extend the scope of who is authorised to carry out reserved legal activities (as argued for by Mr Bennett) -- fits clearly with the other provisions of the LSA that I have set out above. Those other provisions make a clear distinction between persons who are entitled to carry out reserved legal activities and those who are not. An employer, even if authorised to carry out a reserved legal activity, can commit a criminal offence if one of their employees carries on a reserved legal activity without being entitled to (and therefore commits an offence).
63. Accordingly, Mr Middleton was not entitled to conduct litigation merely because he was an employee of a person (here GBS) that was authorised to carry out the reserved legal activity of conducting litigation. The conclusion reached by the SRA in the decision letter of 2 December 2024, and which was relied upon by His Honour Judge Simpkins, that “employees [of GBS] are permitted to undertake “reserved legal activities” due to section 21(3)” is clearly wrong.
64. The learned judge’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.
65. This analysis is also supported by the text of the LSA itself. The LSA expressly contemplates that there will be persons falling within category (a); that is, persons who “assist” in the conduct of litigation: see paragraph 1(7)(a) of Schedule 3 to the LSA (a provision is concerned with the exemption for the purpose of exercising a right of audience before a court). There is nothing in the LSA, however, which contemplates category (b): that is, a person who conducts litigation under the supervision of an authorised solicitor. The absence of such a category is highlighted by the fact that there is express reference in the LSA to an individual who carries on a “Reserved instrument activity” at the direction and “under the supervision of another individual”: see paragraph 3 of Schedule 3 to the LSA.
66. Paragraph 3 of Schedule 3 to the LSA is concerned with whether a person is exempt for the purpose of carrying out a “Reserved instrument activity”: this includes preparing any instrument of transfer or charge for the purposes of the Land Registration Act 2002. One set of circumstances in which exemption arises is provided by sub-paragraphs (3) and (4):

“(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”.

67. I do not need to decide for the purposes of this appeal whether, in fact, Mr Middleton was conducting litigation under the supervision of Mr Ashall or was merely assisting or supporting Mr Ashall in the conduct of litigation. Indeed, it would not be appropriate for the Court to do so given that this would interfere with any regulatory intervention that the SRA may wish to consider in light of this judgment, and there would be a real unfairness to Mr Middleton if this Court was to make any findings about this matter given that he is not a party to the present appeal or to the proceedings below.

(ii) Was the learned judge entitled to award costs against the Appellants?

68. As His Honour Judge Simpkins erred in concluding that the Appellants had “raised this point [under the LSA] and you lost”, the award of costs made against the Appellants cannot stand. The award also falls to be quashed because the sum awarded exceeded by some considerable margin the costs that the learned judge was entitled to award given that this case was allocated to the Intermediate Track. That argument was not made to the learned judge, but I accept that the matter can be raised on appeal as it goes to the power of the judge at first instance.

69. At the time of the hearing before His Honour Judge Simpkins the case had provisionally been allocated to the Intermediate Track: the case was therefore one which fell within Section VII for the purposes of CPR Part 45. Accordingly, unless “exceptional circumstances” applied, a cost cap had to be applied to any award.

70. CPR Part 45.8 provides that:

“Where, in any claim to which Section VI, Section VII or Section VIII of this Part applies, the court makes an order for the costs of a pre-action or interim application, the costs which a party may be allowed are those set out in Table 1, together with any appropriate court fee.”

Table 1 provides that the fee of £333 is recoverable for a claim which “would normally be or is assigned to complexity band 4 of Table 12; or (b) to which Table 14 or Table 15 applies”, along with the application fee of £303.

71. The Appellants submitted to this Court that no fixed costs should have been payable at all because the Respondent had not submitted a completed Precedent U form 24 hours before the hearing: this document is called for pursuant to CPR Part 45.63(2). I reject this argument. The Respondent did not use that particular form, but did produce a document that set out their costs. In substance, therefore, the Respondent had complied with the rule, and the Appellants were not disadvantaged in any way by the form in which the costs were presented. Accordingly, the Court did not err in relying on the document provided by the Respondent.
72. CPR 45.9 provides that the cost cap can be removed :
- “(1) . . . where there are exceptional circumstances making it appropriate to do so.
- (2) If the criteria in paragraph (1) are met, the court may—
- (a) summarily assess the costs; or
- (b) make an order for the costs to be subject to detailed assessment”.
73. There was no indication in the judgment, or in the transcript of the hearing, that the learned judge considered that there were “exceptional circumstances” in this case. Moreover, if the “exceptional circumstances” were the arguments about the proper interpretation of the LSA then they would not have justified an award of costs above the cap in any event, for the reasons given above.
74. Accordingly, the learned judge made an error in ordering the Appellants to pay the costs of the application to lift the stay (which was essentially the costs of Counsel) in the sum of £10,653. Rather, the only award that His Honour Judge Simpkins could have made pursuant to the regime for Intermediate Track cases would have been £333 plus the appropriate court fee of £303.

Other relief

75. I refuse Mrs Mazur’s request that the Court should refer Mr Middleton and Mr Ashall to the SRA for further investigation. The SRA have already intimated in their submissions to the Court that they will await this judgment before deciding what steps to take.
76. I also refuse Mrs Mazur’s invitation to strike out the Respondent’s claim as an abuse of process. Whether or not the lodging of the initial claim was tainted by the involvement of Mr Middleton, the matter has been rectified. The signature of a relevant employee at GBS has been added to the Claim Form. Further, for some time Mr Middleton has been replaced by Lisa Adkin, a qualified solicitor, as the person working on the claim. To strike out the claim would cause real prejudice to the Respondent, which may have a viable case against the Appellants (on which I express

no view). The hardship to the Appellants will be mitigated by this judgment which allows their appeal on the matter of costs.

Conclusion

77. For the foregoing reasons, therefore, I allow this appeal and quash the order made by His Honour Judge Simpkins that the Appellants should pay to the Respondent the sum of £10,653.
78. In accordance with the Court's powers under CPR Part 52.20(2), I vary the order of the learned judge to one of "no order as to costs". This seems to me to reflect the justice of the matter below. On the one hand, the learned judge was right to lift the stay given that Mr Middleton was no longer involved in the proceedings. On the other hand, the argument made by the Respondent as to Mr Middleton's earlier entitlement to be involved in the proceedings was erroneous.
79. I make no order with respect to any of the other costs incurred by the Appellants at earlier stages of the proceedings. These will fall for consideration by the County Court when the proceedings are concluded.