

Financial Remedies Case Law Update

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This case is an example of how the [Mazur v Charles Russel Speechlys \[2025\] EWHC 2341](#) judgment has impacted FR proceedings in the Family Court in which HHJ Farquar was required to consider whether to exercise the Court's discretion to grant an exemption for an unauthorised Legal Executive to conduct litigation.

[XX v GH \[2026\] EWFC 51](#)

Application

The Applicant's solicitors sought for Chartered Legal Executive Ms Burton-Durham to be granted an exemption to be permitted to conduct litigation within this case, notwithstanding that they were awaiting the outcome of the Mazur appeal.

Ms Burton-Durham became a Fellow of the Institute of Legal Executives in 2006 and works for a well-respected law firm. She is trained by Resolution as a collaborative lawyer has been the secretary of East Sussex Resolution for the past 10 years. She provides supervision and support to her team of six solicitors and two paralegals and is a very experienced practitioner in Financial Remedies cases regularly instructing counsel. She is not authorised to conduct litigation in her own right.

Mazur

The decision of Sheldon J in [Mazur v Charles Russel Speechlys \[2025\] EWHC 2341](#) held that a non-authorized individual may not conduct litigation even if acting under the supervision of an authorised person.

The Court identified the 3 routes now offered by the Legal Services Board in light of that decision for CILEX members to obtain stand-alone litigation practice authorisation, namely:

- a. Training and Assessment Route. This involves a 24-week online course with an assessment at the end. The most recent course commenced in January 2026 but is now full. The cost is one of £2350.
- b. The Assessment only Route. This involves a question-and-answer assessment as well as a two-part skills assessment. It is considered likely to take 3 to 6 months to complete this route. The cost is £650.
- c. Portfolio Route. This involves providing portfolios and evidence from the applicant's case load. It is stated that once the portfolio has been provided it should take a period of 6 to 10 weeks to be assessed. The cost is £450.

Ms Burton-Durham intended to apply for authorisation through the 'Portfolio Route' however, the Court was clear that until she is authorised or granted exemption by this Court from requiring authorisation she would not be permitted to do any of the following, whether in these proceedings or others:

- a. Issue proceedings;
- b. Sign statements of case or court documents;
- c. File documents with the court;
- d. Be a client's main point of contact;
- e. Instruct counsel or expert on behalf of the client;
- f. Make substantive case management decisions; or
- g. Exercise independent professional judgement on litigation strategy.

Parties' Positions

The Respondent objected to the application on the basis that they did not approve of Ms Burton-Durham's conduct within this litigation as she sent a letter in November 2024 suggesting parties could settle the dispute regarding the former matrimonial home amicably. The Respondent considered this to be inappropriate as personal allegations against the Respondent were made following the letter therefore making mediation inappropriate. The Respondent suggested that this behaviour put Ms Burton-Durham in breach of the CILEX code of conduct.

The Applicant contended that this objection amounted to the Respondent attempting to decide who the Applicant could use as her lawyer given there appearing to be no formal complaints made to any professional body. Further, they submitted that granting the exemption would be "a fair, just and proportionate way of ensuring that the Applicant can continue to be represented by her chosen lawyer, without added delay or cost", in line with the Overriding Objective **[FPR r1(1)]**.

Test for Exemption

The Court identified that it is Schedule 3 of the Legal Services Act 2007 which gives the power of the Court to grant exemption as follows:

"Schedule 3 Exempt Persons. 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 granted by a court in relation to those proceedings."*

However, there is no guidance on how to reach the conclusion as to whether the exemption should be granted. The parties were only able to provide anecdotal evidence by way of unredacted orders made by a Circuit Judge and a Master in which Legal Executives were granted exemptions which the Court did not consider to be of assistance.

The Court found it helpful to consider the authorities on granting Rights of Audience given that the wording in the LSA 2007 in relation to this is the same, namely the case of [Graham v Eltham Conservative Club \[2013\] EWHC 979](#) which, amongst other things, required 'due deference to the will of Parliament, and general caution' in determining whether to exercise the Court's discretion as to granting Rights of Audience.

Judgment

The Court had no doubts about Ms Burton-Durham's experience and was entirely satisfied that she was 'fully capable' of being able to conduct litigation in light of that experience. Furthermore, the Court considered that it would be highly likely that Ms Burton-Durham would have little difficulty in obtaining authorisation through the 'Portfolio Route'.

However, given the [Graham](#) requirement of giving due deference to the Will of Parliament, and the [Mazur](#) judgment's clarity as to how that Will should be interpreted, the Court concluded that it would not be doing so if it created an alternative method of carrying out unauthorised activities by way of allowing this exemption where there is a clear path through which authorisation can be acquired.

The Court therefore refused to grant the exemption, despite the difficulties this would cause the Applicant and Ms Burton-Durham, as there were no exceptional circumstances within the facts that would warrant doing so.

The Court further declined to grant the exemption in relation to other proceedings, which had been sought by the Applicant, as the effect would be the Court authorising Ms Burton-Durham to conduct litigation. This would, again, be contrary to the Will of Parliament.

Appeal

The Applicant sought permission from the Court to appeal the decision which was granted by HHJ Farquar. The Court's reason for doing so was that the issue of when an exemption granting permission to conduct litigation should be granted is likely to affect many legal practices in the Country and, as such, is a matter that should be considered by a higher Court.

Further, the Court extended the time for filing an Appellant's Notice to 21 days after the publication of the Court of Appeal's decision in [Mazur](#).

Analysis

It is the author's opinion that an appeal of this judgment would now be unlikely given the CoA's decision in [CILEX and others v. Mazur and others \[2026\] EWCA Civ 369](#) on 31 March 2026, which concluded that unauthorised persons such as Ms Burton-Durham can perform tasks within the scope of conducting litigation for and on behalf of authorised individuals including an appropriately authorised CILEX lawyer.

However, this judgment clearly highlights that there is effectively no legal test, statutory guidance or precedence in case law as to how a Court should determine whether to grant an exemption in relation to unauthorised persons conducting litigation. It is the author's view that, given the disruption the [Mazur](#) case caused within the Family Court and the ever-evolving nature of what being a lawyer means, that this lack of clarity could leave the system vulnerable to similar problems in the future.



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