

Revenue and Customs Commissioners v BlueCrest Capital Management (UK) LLP 2025 EWCA Civ 23

This case is the Court of Appeal (CoA) decision in relation to the Upper Tribunal findings concerning the correct interpretation, and application of the facts of the “salaried members” legislation. For a background to the case and the Upper Tribunal (UT) & First Tier Tribunal (FTT) conclusions, please see earlier case briefing in October 2023.

HMRC appealed to the CoA on the basis that the UT had erred in its construction of condition B, in essence that a member needed significant influence over the affairs of the LLP generally, rather than over one aspect of the business or one department and that it concerned solely with managerial influence and not (say) financial influence. BlueCrest cross appealed noting condition B had been correctly constructed but it was unjust to not also reconsider other members of the LLP other than portfolio managers and desk heads. It also appealed that members failed condition A as their remuneration was variable and varied in practice by reference to the profits and losses of the LLP.

In considering condition A the CoA determined that the discretionary allocations were based on the financial performance of the project manager and not linked to the overall profit or losses of the LLP. Thus, condition A was met.

In relation to Condition B the CoA determined that when considering significant influence, the necessary qualifying influence stems from the mutual rights and duties of the members of the LLP as conferred by the contractual framework that governed the LLP (i.e. the LLP agreement). It also stated that influence over the affairs of the LLP that was not contractual in source was to be excluded when considering condition B, but that it would be highly material in deciding whether a person's qualifying influence is "significant".

This conclusion whilst supporting HMRC's narrower interpretation of significant influence and differing to the wider interpretation supported by the FTT and UT, did contradict HMRC's longstanding view as stated in their published guidance, which insisted it was important to look not only at the written LLP agreement but how the LLP operates in practice.

The CoA therefore determined that the FTT and UT had erred in law and sent the case back to the FTT for reconsideration on the correct legal principles, in respect of Condition B.

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