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BlueCrest in the Supreme Court: applying Condition B of the salaried members rules in practice

September 9, 2026

Key Takeaways

1. **Qualifying influence must be legally enforceable and traceable to the limited liability partnership (LLP) agreement.** It must derive from enforceable rights and duties, with the written LLP agreement as the starting point. It may also flow from delegated authority or a role appointment (such as portfolio manager) traceable to that agreement; an “entire agreement” clause does not exclude such sources.
2. **Informal or performance-based influence does not count.** Informal, *de facto* or external influence is excluded, as is influence from strong performance, profit contribution, personal qualities or client relationships. What matters is the scope of a member's formal role, not how well they perform it.
3. **The test is “significant influence,” not control, over the LLP's affairs as a whole.** A right to participate in important decisions suffices, with “significant influence” requiring practical and commercial substance. The influence must be managerial or strategic over the whole business, so day-to-day decisions or those affecting only part of it usually will not qualify. Reserved powers or vetoes held by one member do not, by themselves, deprive others of significant influence.
4. **Assess status prospectively and keep governance documents current.** The test applies at the start of the relevant period, not with hindsight (for example, Pay As Your Earn (PAYE), must be operated for a member who is an employee). LLP agreements and role definitions should be reviewed beforehand and kept up to date.
5. **Watch for the First-tier Tribunal's (FTT) re-determination.** On remittal, the FTT will apply the appellate guidance to the agreed facts, which may further illuminate how Condition B applies to investment managers and similar members.

On 1 July 2026, the Supreme Court (Court) handed down its judgment in the BlueCrest appeal, the first time the salaried members legislation has been considered at this level. The Court dismissed BlueCrest's appeal on both Condition A and Condition B. On Condition B, however, it agreed with the Court of Appeal that the First-tier Tribunal (FTT) had applied the wrong test, so the question of whether the relevant members satisfy Condition B has been remitted to the FTT to be decided again on the correct construction. In other words, the outcome below was upheld, but with the matter sent back to the FTT. For limited liability partnership (LLPs) and their members, the lasting value of the decision lies in how the Court explained Condition B is to be read and applied.

A member is treated as an employee only if all three conditions (A, B and C) are met; a member who "fails" any one of them is taxed as a partner. Condition B is failed, and the member falls outside the rules on this limb, where the mutual rights and duties of the members, and of the LLP and its members, give the member "significant influence over the affairs of the partnership."

Where the influence must come from

The Court confirmed that Condition B is concerned only with legally enforceable rights and duties, both vertical (between the LLP and its members) and horizontal (between the members themselves), as conferred by the contractual and statutory framework, including any implied terms and any common law or equitable rights. Where there is a written LLP agreement, that agreement is the starting point and the ultimate source of those rights and duties.

Importantly, the enquiry is not confined to the four corners of the LLP agreement. Qualifying influence can also flow from delegated authority, or from a member's appointment to a particular role, such as portfolio manager, provided the relevant right or duty can ultimately be traced back to the LLP agreement. So, where members delegate powers to an executive committee, which sub-delegates to a sub-committee or an individual, the rights exercised by those sub-delegates can be a source of qualifying influence. An "entire agreement" clause in the LLP agreement does not shut out these other traceable sources.

Conversely, influence that cannot be traced to a contractual, statutory or other legal source does not count, whether it is informal, *de facto* or external. Influence derived from a member's strong performance, financial contribution to profits, personal qualities or relationships with clients is therefore excluded. The key distinction is between the scope of a member's formal role, which can generate qualifying influence, and their performance in that role, which cannot, because employees and partners alike may perform well. The Court illustrated the point through Mr Platt, whose considerable practical sway over BlueCrest, including the LLP (despite him not being an actual member), flowed from his various personal and executive positions in the group rather than from any members' mutual rights and duties, and as such would have been non-qualifying even if he had been a member, though still relevant when assessing whether actual members' qualifying influence was significant.

How much influence, and of what kind

“Significant,” “influence” and “affairs” are ordinary English words that the Court declined to define by substituting other language. The threshold is influence, not control: a member need not be able to direct or dictate a course of action, and it is enough that they have the right to participate in important decisions capable of affecting the LLP's affairs, whether through meaningful voting or other rights. The word “significant” adds intensity – a degree of influence that has practical and commercial substance in the conduct of those affairs in the real world.

It follows that soft power, the influence of a “shadow” member, or influence flowing from being an outstanding rainmaker or investor, or from a relationship with a key customer, all fall away, because none of that influence derives from the enforceable mutual rights and duties of the members and the LLP. However, it could be a factor to consider when assessing whether a member's qualifying influence is significant.

Over the affairs of the partnership as a whole

The qualifying influence must be exerted over “the affairs of the partnership,” which the Court read as the affairs of the LLP generally, viewed as a whole and given the widest meaning. The focus is likely to be on managerial or strategic decision-making, echoing the common law doctrine that a partner has “a voice in the management of the affairs” of the firm. Day-to-day or operational decision-making, and still more so decisions affecting only part of the business, will usually not qualify, even where that part is core to the business. On that basis, investment decisions taken by a portfolio manager over their own capital allocation, however important to the LLP's profitability, do not amount to significant influence over its affairs.

The interveners, the Alternative Investment Management Association and the Managed Funds Association, intervened to press for clarity on how Condition B should be construed. They argued that if an LLP agreement reserves certain decisions to a single member, no other member could ever have the necessary influence, rendering the condition unworkable. The Court rejected that concern: just as the holders of a class of shares may enjoy a veto over specified matters without depriving the board or the general body of shareholders of significant influence, so significant influence over an LLP's affairs can accommodate the existence of reserved powers.

A structured way to apply Condition B

Drawing the strands together, the Court set out how to approach Condition B. First, consider what the LLP actually does in carrying on its business. Secondly, ask whether, by virtue of contractual, statutory, or other legal or equitable rights and duties as a member (including any formal role and responsibilities that can be traced back to the LLP agreement), the member is given a voice in decisions affecting the affairs of the LLP as a whole. Thirdly, recognise that the requisite qualifying influence is likely to be managerial or strategic in nature. The Court gave three reasons for this reading: it is the natural meaning of the words; it fits the purpose of drawing a parallel with a traditional partnership, where the partners are together responsible for running the firm; and it meets the need for reasonable certainty and objectivity. Where, highly unusually, there is no written LLP agreement, the members' mutual rights and duties fall to be determined by the default provisions of the Limited Liability Partnerships Act 2000 and the Limited Liability Partnerships Regulations 2001, which then form the source of any qualifying influence for the purposes of Condition B.

A forward-looking, workable test

The last of those reasons is the one that matters most in day-to-day practice. Each of the three conditions is an objective test intended to be applied prospectively, so that the member and the LLP can assess status at the start of the relevant period rather than after the event with the benefit of hindsight. That is important practically: for example, PAYE will need to be operated by the partnership if the member is an employee for tax purposes and for certainty. The conditions must also be workable, in the sense of being capable of being applied in advance by taxpayers and their advisers, which was an express aim of the legislation.

This forward-looking, workability rationale explains why the Court anchored Condition B in enforceable rights rather than in a fact-sensitive assessment of who was, in truth, influential. As the Court observed, BlueCrest's approach would have required difficult evaluative judgments that vary with the facts of each case and are often impossible to make in advance at the start of the relevant period.

What this means in practice

For LLPs and their members, when assessing whether Condition B is met or failed, particularly asset management firms with senior, high-earning members, the key points are:

- **Start with the constitutional documents.** Qualifying influence must be found in the LLP agreement and in any governance instruments or role appointments that can be traced back to it.
- **Map roles, not performance.** Distinguish the scope of a member's formal role from how well they perform it, because only the former can generate qualifying influence.
- **Think about the whole business.** Influence over a discrete part of the business, even a core one, is unlikely to be enough; look for a voice in decisions about the LLP's affairs taken as a whole.

- **Reserved powers are not fatal.** Vetoes or matters reserved to one member do not, of themselves, deprive other members of significant influence.
- **Assess status in advance.** Because the test is applied prospectively, LLP agreements and role definitions should be reviewed before the start of the relevant period and kept up to date.
- **Watch for the FTT's re-determination.** With the Condition B test remitted for determination, the FTT will apply the Supreme Court's and Court of Appeal's guidance to the agreed facts of the BlueCrest case, which may in turn help illuminate how the test applies to investment managers and similar members.

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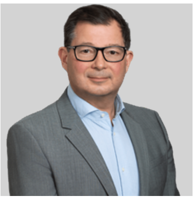
For more information, please contact your Katten lawyer or any of the following lawyers.



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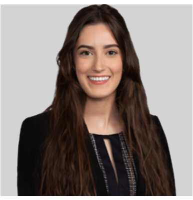

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