

## The test of true partnership – when are LLP members also employees?

This week's decision by the Court of Appeal in *Tiffin v Lester Aldridge LLP* - [2012] EWCA Civ 35 - is a welcome clarification of the principles to be applied in deciding whether junior members of a limited liability partnership – typically described as “salaried” or “fixed share” partners - are also employees of the LLP.

Mr Tiffin was a member of Lester Aldridge LLP, a solicitors' practice, and had the title of “fixed share partner”. He had both a guaranteed fixed share of profits (akin to a salary) and a further share by reference to a small number of profit points. He contributed capital of £5,000. As a fixed share partner he could vote on some partnership matters, but not all. He would share in any surplus assets following a winding up of the business. He had some discretion as to where and when he carried out his work.

Following his dismissal from the LLP, he applied to the Employment Tribunal for compensation for unfair dismissal, redundancy and breach of contract, on the basis that he was an employee of the LLP. He argued that having a small share of the profits relative to the full equity partners and making a smaller capital contribution and having lesser voting rights in management matters all meant that his true status was that of an employee. The Court of Appeal (following the decisions of both the Employment Tribunal and the Employment Appeal Tribunal) unanimously dismissed his claim. They found that his terms of membership of the LLP, as noted above, were all hallmarks of being a partner, not an employee. It did not matter that his financial stake or his voice in partnership affairs were smaller than some other partners because there is no requirement for partners to have equal rights. What is important is the overall character of their membership terms.

The advent of LLPs, which combine great flexibility and the benefit of limited liability for members, has spawned a wide variety of membership arrangements. These typically range from “full equity”, where the members may contribute substantial capital and be remunerated entirely by a share of the profits, through to “salaried member” where the member may contribute no capital, be paid a fixed salary and have no say in management decisions. There are several shades in between.

In many cases, a motivating factor for introducing salaried members has been their self-employed status for tax purposes, which has enabled LLPs to make considerable savings on their employers' National Insurance bill.

What is not always appreciated is that an individual can be self-employed for tax purposes but still be an employee under the employment legislation. Such an individual may sign up to the LLP members' agreement but subsequently bring a claim in the Employment Tribunal if they are dismissed or made redundant. They may also claim other employment-related rights such as maternity or paternity leave, sick pay and so on, if the statutory rights are better than those offered by the members' agreement.

For partnership lawyers the decision will be welcome for clarifying the interpretation of section 4(4) of the Limited Liability Partnerships Act 2000, the section dealing with when LLP members are also its employees and which was notoriously badly drafted.

LLP managers will welcome the court's robust decision in favour of non-employment status. However, each case will still depend on its own facts and although the test has been clarified, the rules have not really changed. Different membership terms could well lead to a different conclusion and it would be prudent to take the advice of a partnership law specialist if you are considering appointing new members on this basis or are reviewing existing arrangements.

Stephen Williams heads our Partnerships and Professional Practices Team and may be contacted on [stephen.williams@crippslaw.com](mailto:stephen.williams@crippslaw.com) if you would like further information.



**Stephen Williams**

Partner

T: +44 (0)1892 506 344

E: [stephen.williams@crippslaw.com](mailto:stephen.williams@crippslaw.com)