Neutral Citation Number: [2018] EWCA Civ 2250

Case No: A2/2017/1504

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
IN BANKRUPTCY
HIS HONOUR JUDGE KLEIN
SITTING AS A JUDGE OF THE HIGH COURT
[2017] EWHC 561 (Ch)

Strand, London, WC2A 2LL

Date: 16/10/2018

Before :

LORD JUSTICE PATTEN
LORD JUSTICE LEWISON
and
LORD JUSTICE MOYLAN

- -

Between :

The Law Society **(acting through the Solicitors Regulation Authority)**	**Appellant**
- and -	
John Blavo	**Respondent**

- -
- -

Mr Richard Coleman QC and Ms Chloe Carpenter (instructed by **Monro Wright & Wasbrough LLP**) for the Appellant
Mr Mark Cawson QC (instructed by **Radcliffes Le Brasseur Solicitors**) for the Respondent

Hearing dates: 15th and 16th May 2018

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Approved Judgment

Lord Justice Moylan:

Introduction

1. The Law Society, acting through the Solicitors Regulation Authority ("the SRA"), appeals from the order of His Honour Judge Klein, sitting as a Deputy High Court Judge, dated 8th May 2017 setting aside two statutory demands served by the Law Society on Mr Blavo, the Respondent to the appeal.

2. The statutory demands, dated 12th November 2015 and 18th February 2016, were served under s. 268(1)(a) of the Insolvency Act 1986 ("the 1986 Act") and claimed debts of £151,816.27 and £643,489.20 for "costs incurred" by the Law Society "in respect of the intervention into (Mr Blavo's) practice recoverable as a debt pursuant to paragraph 13 Schedule 1 Solicitors Act 1974". The intervention in Mr Blavo's practice had occurred simultaneously with an intervention in Blavo & Co Solicitors Ltd ("the Company").

3. The single ground of appeal advanced by the SRA is that the judge was wrong to decide that the debts the subject of the statutory demands were not debts for liquidated sums within the meaning of s. 267(2)(b) of the 1986 Act.

4. Mr Blavo has filed a Respondent's Notice seeking to uphold the judge's order on different or additional grounds. Diffuse grounds were advanced which included at least one point which was clearly outside the proper scope of this appeal. At the hearing of the appeal Mr Cawson QC, who did not appear below, rightly accepted this. In support of his argument, that the judge should have set the statutory demands aside under r. 6.5(4)(b) of the Insolvency Rules 1986 ("the 1986 Rules") on the basis that the debts were disputed on substantial grounds, he focused his case on points which can be summarised as: (i) that Mr Blavo had no practice which could have been the subject of any intervention but, if he did, it was not co-extensive with the Company's "business" and, accordingly, the costs incurred by the SRA had to be apportioned as between the interventions because he could not be liable for the costs of the intervention in the Company; and (ii) that the contention that the statutory scheme limited the manner in which Mr Blavo can challenge the intervention, and accordingly the costs incurred, would be contrary to Mr Blavo's rights under Article 6 and Article 1 of the First Protocol of the European Convention on Human Rights ("A1P1").

5. The issues raised by this appeal can, therefore, be summarised as follows:

   (i) Was the judge wrong to decide that the sums claimed in the statutory demands were not debts "for a liquidated sum" under s.267(2)(b) of the 1986 Act?;

   (ii) (a) What was the extent of Mr Blavo's practice, if any, and was it co-extensive with the Company's business?;

   (b) If it was not co-extensive, in the absence of any apportionment is it established that the costs incurred in the intervention in his practice exceed the £5,000 bankruptcy level?;

(iii) Does the statutory scheme breach Mr Blavo's rights under the ECHR?

The above matters were respectively categorised in the arguments as (i) The Liquidated Sum issue; (ii) the Co-Extensiveness issue; and (iii) the Exclusive Remedy issue. I use these descriptions in this judgment.

Background

6. I take the background from the succinct summary contained in the judgment below, reported as *Blavo v Law Society* [2017] 1 WLR 4514:

> "2. Mr Blavo is a solicitor and was a director (and, by October 2015, the sole director) of and the sole shareholder in Blavo & Co Solicitors Ltd ("the company") through which vehicle legal services were provided. The company was regulated by the Solicitors Regulation Authority ("SRA"). For regulatory purposes Mr Blavo was a "manager" of the company. By mid-2015 the company was operating from 18 offices throughout the country. It employed 200 staff and had contracts with 150 consultants. Mr Blavo explains in a witness statement, that he believes the company was one of the largest providers of legal aid services in the country. It held contracts with the Legal Aid Agency ("the LAA") for the provision of work including in relation to mental health tribunals. Following an investigation by it, the LAA terminated the company's legal aid contracts with effect from 1 October 2015. On 13 October 2015 the panel of adjudicators sub-committee of the SRA resolved to intervene into the company. The grounds for the intervention were expressed to be that there was reason to suspect dishonesty on the part of a manager or employee of the company and to protect the interests of clients (or former or potential clients) of the company or the beneficiaries of any trusts of which the company was a trustee. On the same day the panel of adjudicators sub-committee resolved to intervene into Mr Blavo's "practice at Blavo & Co Solicitors Ltd". The ground for that intervention was expressed to be because "there is reason to suspect dishonesty on your part in connection with your practice". Unsurprisingly, following the withdrawal of the LAA contracts and after the intervention into it, the company went into liquidation. It is the costs of the intervention, from 15 October 2015 to 20 January 2016, into the company and Mr Blavo's practice which are the underlying subject matter of the statutory demands."

7. The interventions were activated by the SRA serving two Notices on 13th October 2015. One was addressed to "Blavo & Co Solicitors Limited Practising as: Blavo & Co Solicitors Limited". The other was addressed to Mr Blavo "Practising as: Blavo & Co Solicitors Limited" and was in respect of "your practice at" the Company.

8. The decision to intervene "into the recognised body, Blavo & Co Solicitors Limited" was made on the following grounds:

> "1. There is reason to suspect dishonesty on the part of a manager or an employee of the recognised body Blavo & Co Solicitors Limited.
>
> 2. To protect the interests of clients (or former and potential clients) of Blavo & Co Solicitors Limited or the beneficiaries of any trust of which it is or was a trustee."

The decision to intervene into Mr Blavo's "practice at Blavo & Co Solicitors Limited" was made on the following ground:

> "... there is reason to suspect dishonesty on your part in connection with your practice."

9. The events which led to the interventions are set out in the "Decision of the Adjudication Panel" made in respect of both the Company and Mr Blavo's practice. These included that the Company "is wholly owned and controlled by Mr John Blavo who is its COLP and COFA" (i.e. Compliance Officer for Legal Practice and Compliance Officer for Finance and Administration). In "recent weeks, 11 of the firm's other directors have resigned, leaving Mr Blavo as the sole director". The Legal Aid Agency ("the LAA") had terminated the Company's legal aid contracts alleging "widespread "*false and fraudulent*" claims perpetrated by the firm from the Legal Aid Fund" (paragraph 5.1 of the adjudication decision). The decision based its "Reason to suspect dishonesty" significantly on the following:

> "Between April 2012 and March 2015, the firm made claims to the LAA for payment for attendance at Mental Health Tribunals in 20,942 mental health cases. The firm received over £22 million in fees from the LAA in relation to these cases. However, HMCTS has confirmed that the firm only made applications in 3,192 cases during this period of which only 2,053 were considered at Mental Health Tribunals. Therefore, more than 20,000 Mental Health Tribunal for which the firm made claims are not recorded in the records of HMCTS and do not appear ever to have taken place."

10. In respect of Mr Blavo the decision states:

> "The sheer scale of the alleged fraudulent activity of the firm is described above, and the fact that it occurred repeatedly over a three year period, suggest that John Blavo, as sole shareholder of the firm as well as a director and with managerial and financial control which that position gave him, knew or ought to have known that it was happening."

In summary there was reason to suspect dishonesty by Mr Blavo "because of the degree of the alleged fraudulent activity, the period of time over which it apparently took place, and his standing within the firm".

11. The interventions were conducted by the Law Society through lawyers engaged for that purpose. The costs totalled just under £800,000 as set out above.

12. The statutory demands served by the Law Society were addressed to Mr Blavo personally. As set out above they each claimed that the respective sums were due "for costs incurred between (specified dates) in respect of the intervention into the debtors (sic) practice recoverable as a debt pursuant to paragraph 13 Schedule 1 Solicitors Act 1974". The Company had been compulsorily wound up on 30th November 2015.

13. Mr Blavo applied to set aside the statutory demands relying on the "grounds" set out in his witness statement. In this he stated that he had considered whether to challenge the interventions but had "decided that there was no point doing so because the Company was being closed in any event".

14. The essence of his challenge to the demands was that none of the costs of the interventions were payable by him personally because "I cannot be said to have personally had any client practice at the Company". The costs "must relate to the intervention into the Company because all of the client work, including all of the legal aid work, was carried out by the Company rather than any individual for the Company".

15. The skeleton arguments prepared on behalf of Mr Blavo for the hearings below repeated this point. It was submitted that Mr Blavo had not "in any significant sense been practising as a solicitor in a personal capacity" (Skeleton 20th June 2016). He had not had "conduct of any client files"; had not held any money or documents "in a personal capacity" capable of engaging the Law Society's powers under Schedule 1; he had "no "personal practice", or none in any real sense, in respect of which any ""intervention", or any significant intervention was possible" (Skeleton 12th December 2016). It was submitted that, accordingly, the "only real and meaningful" intervention had been into the Company and "its business" and it was, therefore, the Company which was liable for the "statutory debt".

16. It was acknowledged that the costs could be recovered both from the Company and from a manager of the Company (which would include Mr Blavo). However, Mr Blavo submitted that costs were only recoverable from a manager if the High Court made such an order following an application under paragraph 13A of Schedule 1 to the Solicitors Act 1974 ("the 1974 Act") as applied by paragraph 35(g)(ii), Schedule 2 to the Administration of Justice Act 1985 ("the 1985 Act").

17. Mr Blavo challenged the comment in the letter from the Law Society's solicitors dated 10th December 2015 that: "Following the authority of Williams (*Williams v Law Society* [2015] 1 WLR 4982), a solicitor such as Mr Blavo, has an individual practice within the corporate body which for a sole practitioner must equate to the totality of the practice". He contended that this was not correct because he had only been one of 12 directors and because, as referred to above, he had not had "any client practice". Mr Blavo submitted that the SRA was mistakenly acting as though Mr Blavo had been, or could be treated as having been, a sole practitioner.

18. The other ground advanced in Mr Blavo's witness statement was that "the claim for costs has not been assessed and is not a liquid claim".

19. In addition to the above grounds, the skeleton arguments filed on behalf of Mr Blavo argued that the SRA could not intervene into both the Company's business and Mr Blavo's practice (if any); that paragraph 13 of Schedule 1 was "plainly not intended to apply to a solicitor who is a manager of a regulated entity" (Skeleton 12th December 2016); and that the SRA's argument would result in Mr Blavo's rights under the European Convention on Human Rights being breached.

20. The Law Society's arguments in response were set out in skeleton arguments dated 15th June 2016 and 8th December 2016. In summary they were as follows.

21. The "costs incurred" in the interventions were liquidated debts due under paragraph 13 of Schedule 1 and were, therefore, properly the subject of statutory demands.

22. It was accepted that Mr Blavo had had the right to seek an assessment but he had not done so and "given that the bills have been paid by the" Law Society there appeared to be no grounds on which he would be able to obtain an assessment (under the 1974 Act).

23. Mr Blavo was liable for all the intervention costs because his "practice (activities as a solicitor) extended at least to the totality of the activities" of the Company. They were co-extensive. This was based on the fact that Mr Blavo was involved in the Company as sole director and sole shareholder. Without this the Company could not have conducted its business. There was "a complete overlap between his practice and the practice of the recognised body such that all of the costs incurred by the SRA were incurred in respect of both interventions".

24. Further, even if Mr Blavo could obtain an assessment and/or his practice was narrower than that of the Company, it was "plain" that "on any view" the debts due would not be reduced below the statutory minimum threshold for a statutory demand, namely £5,000.

25. The applications to set aside the statutory demands were ultimately determined by HHJ Klein on 29th March 2017 leading to the order from which the SRA appeals.

26. It is also relevant to set out a number of other background facts which I will explain in more detail later in this judgment.

27. The Company was an "authorised body" in that it had been authorised by the SRA to practise as a "recognised body", being a body recognised by the SRA under s. 9 of the 1985 Act.

28. The Company was eligible to be a recognised body because it was a company of which at least one manager (meaning a director of the company) was a solicitor with a current practising solicitor *and* of which all of the managers and interest holders were lawyers. At the date of the interventions Mr Blavo was the sole manager (because the others had resigned) as well as continuing to be the sole interest holder.

29. The manner in which Mr Blavo was practising as a solicitor was that permitted under r. 1.1(c) of the SRA Practice Framework Rules 2011 ("the PFR 2011"), namely "as a manager ... or interest holder of an authorised body".

The Judgment Below

30. The judgment sets out the statutory regime relating to interventions and other relevant provisions, which I deal with below.

31. As referred to above, some very broad submissions were made to the judge on behalf of Mr Blavo including that, because Mr Blavo was a manager of a recognised body, the powers of intervention against him personally had been lost and "to that extent, the 1974 Act repealed" (paragraph 17 of the judgment). This meant that the "purported intervention into any practice Mr Blavo had was of no effect and he could not be indebted, on any basis, to the Law Society ..." (paragraph 17).

32. The judge rejected this submission. For a number of reasons he considered this a "startling" proposition. It appeared contrary to the way in which the legislative provisions had been extended for Parliament "to permit an intervention into a recognised body because of a solicitor's suspected dishonesty but not to allow an intervention into the very same solicitor's practice" (paragraph 18).

33. A number of grounds were advanced by Mr Blavo in support of a submission that the intervention into Mr Blavo's practice had been "illegitimate" (paragraph 21 of the judgment). These included that there "was no basis for concluding that Mr Blavo had any role other than as a manager of the company so that there was no basis for concluding that the intervention (as against him) was necessary".

34. The judge also rejected this submission. He pointed to the provisions of the 1974 Act which stipulate that any challenge to a notice has to be made by application to the High Court within 8 days of service of the relevant notice (paragraphs 6(4) and 9(9) Part II, Schedule 1 to the 1974 Act). He determined, following *Gadd v Law Society* [2012] EWHC 2843 (QB), that, because this was an attack on the "legitimacy of the intervention, it would be an abuse of process to allow such a defence to be advanced. To allow such a defence to be advanced would amount to a non-permissible collateral challenge on the intervention process" (paragraph 26). The judge additionally determined that, in any event, Mr Blavo had "not identified a defence to a debt claim" (paragraph 25).

35. Following the structure of the judgment, the next issue addressed was the submission that there were no costs attributable to the intervention in Mr Blavo's practice. The judge rejected this submission on the basis that it was "unreal to suppose that no intervention costs will have been incurred" in respect of the intervention in his "practice" (paragraph 33). Mr Blavo had asserted only that he had no "client practice"; he had not asserted that he had no "solicitor's practice", which was "wider than merely a client practice". The judge gave "one example" of this, namely Mr Blavo's "responsibility, as a director of the company, to ensure the company's compliance with the SRA Account Rules 2011". The judge did not separately consider the extent of Mr Blavo's liability for the intervention costs perhaps on the basis of the submission that the costs of the intervention in his practice would not be reduced below £5,000.

36. The point on which Mr Blavo succeeded before the judge was on the issue of whether the sums claimed in the statutory demands were "for a liquidated sum". After considering a number of cases including *Pine v Law Society (No 2)* [2002] 1 WLR 2189 and *McGuiness v Norwich & Peterborough Building Society* [2012] 2 All ER (Comm) 265 ("*McGuiness*") the judge decided that (paragraph 47):

> "... generally, the liability of a solicitor for the statutory debt under Schedule 1, Part II, paragraph 13 of the 1974 Act, is not a liability for a liquidated sum, at least where the liability is for costs incurred, as in this case, by a solicitor intervening agent."

In coming to this conclusion the judge did not follow Blackburne J's decision in *Pyke v Law Society* [2006] EWHC 3489 (Ch) that the statutory debt under paragraph 13 is "liquidated in amount": at [10]. This was principally because the judge considered that, applying *McGuiness*, costs due under paragraph 13 could not be said to be "a pre-ascertained liability" (paragraph 42):

> "The Law Society, as a client, would, generally, have the right to a detailed assessment of the intervening agent's costs and, as (counsel for the SRA) accepted, properly in my view, a solicitor the subject of an intervention has the right, under section 71 of the 1974 Act, to a detailed assessment of the costs of a solicitor intervening agent. That such a right exists is inconsistent with the proposition that, as a generality, the liability under paragraph 13 is a pre-ascertained one."

37. Underlying these observations, the judge referred to the general position that a "solicitor's claim is for a reasonable sum, whether by statute or at common law, and not for a liquidated sum": *Turner & Co. (a firm) v O. Paloma SA* [2000] 1 WLR 37, Evans LJ giving the judgment of the court, at p. 52B/C. The judge considered whether this general position applied to a claim based on paragraph 13. He decided that it did, in part, because "it would be odd if the underlying basis for the statutory debt was generally an unliquidated sum ... but the statutory debt itself was not" (paragraph 45). He also stated that it would be "particularly odd" when the solicitor, the subject of an intervention, is entitled to apply for a detailed assessment of the intervention costs under s. 71 of the 1974 Act: *Pine v Law Society (No 2)*.

38. An issue developed during the course of the hearing of this appeal as to the state of the evidence about whether/when the bills presented by the solicitors acting in the interventions had been agreed and/or paid by the Law Society. This does not feature in the judgment below because, as acknowledged by Mr Cawson, they were not matters raised by either party. The grounds relied on by Mr Blavo in support of his application to set aside the demands were as set out above and they did not include that, in effect, the costs had not been "incurred" by the Law Society.

39. As a result, the judge only dealt with the issue of whether the normal principles applicable to solicitors' charges are applicable to the sums being claimed by the Law Society. He decided that they did. It was in that context that the judge noted, in passing (paragraph 53) that, "As it happens", there was no admissible evidence either that there

had been any prior agreement between the Law Society and the solicitors who acted in the interventions fixing the costs or that the Law Society had become "bound" to accept the sums claimed by those solicitors.

40. In the letter dated 10th December 2015 (paragraph 17 above), which was exhibited by Mr Blavo, the Law Society's solicitors said that the Law Society had "set the rates for charging by individual solicitors, have approved and paid the invoices for October and approved the November invoices". In the skeleton arguments filed on behalf of the Law Society it was specifically stated that "the bills have been paid" by the Law Society/SRA.

41. As I have said, the applications to set aside the demands advanced legal arguments as to the principles applicable to intervention costs incurred by the Law Society and did not raise evidential issues as to whether they had been "incurred", by being agreed/paid, when this was clearly being asserted on behalf of the Society.

42. I would accept that, when advancing any claim based on paragraph 13, the Law Society needs to establish what costs have been incurred. But, equally, if it is being contended that the costs have not been incurred, this must also be expressly raised.

43. Mr Cawson accepted during the hearing that costs will be "costs incurred" under paragraph 13 when they have been agreed or paid (if agreement can be inferred). In my view, it is now too late for Mr Blavo to seek to argue that the sums claimed in the statutory demands do not represent costs "incurred" in that they have not been paid or agreed by the SRA. It was clearly being asserted on behalf of the SRA that *its* liability was established because the costs had been agreed and/or paid. If a point was to be taken as to proof it needed to be taken in the course of the proceedings leading to the judgment below and not subsequently.

The Legal Framework

44. The relevant legal framework has two distinct elements, namely (a) that applicable to the provision of, broadly stated, legal services and the manner in which a solicitor can practise; and (b) that applicable to statutory demands, in particular the meaning of "liquidated sum".

(a) Legal Services and the SRA

45. The SRA was established by the Law Society pursuant to the Legal Services Act 2007 ("the 2007 Act"). It was created to implement the required separation between the regulatory and the representative functions of the Law Society. The former functions have been delegated to the SRA by the Law Society.

46. In discharging its regulatory functions (defined broadly: s. 27 the 2007 Act) the SRA is required, "so far as is reasonably practicable, (to) act in a way (a) which is compatible with the regulatory objectives, and (b) which the approved regulator considers most appropriate for the purpose of meeting those objectives": s. 28 the 2007 Act. The "regulatory objectives" are listed in s.1 and include "protecting and promoting the public interest" and "promoting and maintaining adherence to the professional principles". The "professional principles" are set out in s.1(3) and include "that

authorised persons should act with independence and integrity" and "that authorised persons should maintain proper standards of work".

47. I propose to deal with (i) the manner in which legal services can be provided with particular reference to how a solicitor can practise; and (ii) the provisions dealing with interventions and their costs.

48. I start with two general observations.

49. The first is that the manner in which legal services can be provided and the regulatory framework changed significantly following the 2007 Act. Some changes had been effected by the 1985 Act but they were much more modest in their scope. Changes to the way in which legal services can be provided, through new business structures, inevitably meant that the regulatory structure had to be developed to ensure the maintenance of proper regulation. This involved, as set out in *Cordery on Legal Services* 9th Edition, as referred to in the judgment below, the introduction of "entity regulation in parallel with, and not as a replacement for, regulation of individual lawyers" (paragraph A24).

50. The second is that the relevant framework has developed in, what might be called, a piece-meal manner. This has been done, not by introducing a new comprehensive code, but through amendments to existing legislation (the 1974 Act and the 1985 Act), new legislation (the 2007 Act) and through, for the purposes of this case, new rules by the SRA. As put by *Cordery* "the new structures partly replaced the existing framework leaving other elements untouched" (paragraph A7). The result, not uncommon in such circumstances, is that there are elements of the framework which do not fit easily together or easily within the overall structure.

51. This can create difficulties of construction but, in my view, it also enhances the importance, when construing and applying the provisions of the relevant statutes and of the rules, of focusing on a critical purpose of the whole framework, namely the public interest in the proper and effective regulation of those providing legal services. It is, for example, clearly important that the regulatory powers should be matched to the manner in which legal services can be provided. In my view, this requires, unless otherwise constrained, that the provisions of the individual parts (statutes and rules) should be interpreted consistently so as to create or support a coherent framework as a whole.

(i) Legal Services and Solicitors

52. The manner in which legal services can be provided in England and Wales changed significantly following the 2007 Act. What is set out below is not intended to be comprehensive and does not refer to some elements of the framework which are not relevant to this case. It derives, in part, from a Note provided by Ms Carpenter after the conclusion of the hearing, for which I am very grateful, and which set out the regulatory framework within which solicitors conduct their practices.

53. The *SRA Handbook*, as it states, "brings together the key regulatory elements" (para 3). One section contains the "Authorisation and Practising Requirements" which include the SRA Practice Framework Rules 2011 ("the PFR 2011"), the SRA Authorisation

Rules 2011 ("the AR 2011") and the SRA Handbook Glossary 2012 ("the 2012 Glossary") which defines the terms used in the rules and regulations.

54. Only "authorised persons" (or, although not relevant to this appeal, "exempt persons") are entitled to carry on reserved legal activities: s. 13, the 2007 Act. An authorised person is defined by s. 18:

> "(1) 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 (other than by virtue of a licence under Part 5), or
>
> (b) a licensable body ... ".

A "person" includes a "body of persons (corporate or unincorporate)" (s. 207).

55. An "authorised body" means: "(i) a body that has been authorised by the SRA to practise as a licensed body or a recognised body; or (ii) a sole practitioner's practice that has been authorised by the SRA as a recognised sole practice": 2012 Glossary.

56. There are, therefore, two different types of authorised bodies, recognised bodies and licensed bodies. This judgment is not concerned with the latter. A recognised body is a body recognised by the SRA under s. 9 of the 1985 Act. It must be a "legal services body" as defined by s. 9A. The Company was a recognised body.

57. Section 9 provides that the Law Society may make rules:

> "making provision as to the management and control of legal services bodies".

Section 9A (1) provides that a legal services body must satisfy "the management and control condition" and "the relevant lawyer condition".

58. Rule 13.1 of the PFR 2011 provides:

> "13.1 To be eligible to be a recognised body, a body must be a legal services body namely a partnership, company or LLP of which:
>
> (a) at least one manager is:
>
> (i) a solicitor with a current practising certificate, or ...
>
> and
>
> (b) all of the managers and interest holders are lawyers and legally qualified bodies".

The services which a recognised body can provide are limited to those set out in r. 13.2 of the PFR 2011 (which I do not propose to set out).

59. The term "manager" includes, "if the body is a body corporate ... a director of the body": s. 207, the 2007 Act and the 2012 Glossary. It is important to note that one manager *has* to be a solicitor with a current practising certificate; the other managers only have to be lawyers, as do all interest holders.

60. Additionally, in order to be an authorised body, the SRA has to approve the body's managers, owners and compliance officers. By r. 13.2 of the AR 2011 a solicitor with a practising certificate is deemed to be approved as suitable to be a manager and/or to be an owner of an authorised body. By r. 13.3 a lawyer who is a manager of an authorised body is deemed to be approved as suitable to be a compliance officer of an authorised body.

61. By r. 1.1 of the PFR 2011, a solicitor can only practise as a solicitor in a number of defined ways which include as a "sole practitioner" and/or:

> "(c) as a "manager, employee, member or interest holder of an authorised body provided that all work you do is:
>
> (i) of a sort the body is authorised by the SRA to carry out; or
>
> (ii) done for the body itself ...".

62. Rule 9 of the PRF 2011 sets out when a solicitor will require a practising certificate by defining when a solicitor "will be practising as a solicitor":

> "9.2 You will be practising as a solicitor if you are involved in legal practice and:
>
> (a) your involvement in the firm or the work depends on your being a solicitor,
>
> (b) you are held out explicitly or implicitly as a practising solicitor,
>
> (c) you are employed explicitly or implicitly as a solicitor, or
>
> (d) you are deemed by section 1A of the SA to be acting as a solicitor".

Legal practice is defined by r. 9.3 as including not only the provision of legal advice (and a number of other specified services) "but also the provision of other services such as are provided by solicitors".

63. Rule 11 of the PFR 2011 is headed: "Participation in legal practice". Rule 11.1 provides that:

> "If you are a solicitor ... and you are:

(a) a manager, member or interest holder of:

(i) a recognised body ...

it must be in your capacity as a solicitor ...".

64. The word "practice" is defined in the 2012 Glossary as meaning:

> "the activities, in that capacity of: (i) a solicitor ... (or) (vi) a manager of an authorised body
>
> ...
>
> and "practise" and "practising" shall be construed accordingly ...".

65. The term "firm" is defined in the 2012 Glossary as meaning:

> "... an authorised body or a body or person which should be authorised by the SRA as a recognised body or whose practice should be authorised as a recognised sole practice (but which could not be authorised by another approved regulator) ...".

66. The term "lawyer" is defined in the 2012 Glossary as including "a member of one of the following professions, entitled to practise as such: (a) the profession of solicitor ... of the UK."

67. In summary the effect of these provisions is as follows:

(a) A solicitor can practise *as* a solicitor as a manager (i.e. director) and/or as an interest holder of an authorised body provided that all the work they do is done for the authorised body itself: r. 1.1(c) PFR 2011;

(b) A solicitor who is a manager and/or an interest holder *must* be such in their capacity as a solicitor: r. 11.1 PFR 2011;

(c) A solicitor will be practising as a solicitor if they are "involved" in legal practice and the solicitor's involvement in the authorised body *or* the work depends on them being a solicitor: r. 9 of the PFR 2011;

(d) A solicitor's involvement in an authorised body as a manager and an interest holder will depend on them being a solicitor, in particular when they are the one director with a current practising certificate: r. 13.1 PFR 2011;

(e) The activities of a solicitor "in that capacity", which will necessarily include their activities as a manager and as an interest holder, will constitute their practice.

68. Accordingly, in the present case, Mr Blavo practised as a solicitor as a manager (i.e. director) and as an interest holder (i.e. shareholder) of an authorised body, namely the Company. The Company was an authorised body because it was a recognised body. It

was eligible to be recognised because (a) Mr Blavo, as a solicitor with a practising certificate, was a manager and, in fact, the only manager at the time of the interventions; and (b) Mr Blavo, as a lawyer, was the sole shareholder. *Both* of these were necessary conditions to permit the Company to provide legal services.

(ii) Interventions and Costs

69. An intervention is the term used to describe the statutory powers exercisable by the SRA in respect of solicitors and recognised bodies (or licensed bodies). As described by Mr Coleman QC during the hearing, the statutory provisions contain a collection of powers given to the SRA which it exercises in the public interest.

70. Section 35 of the 1974 Act is headed "Intervention in solicitor's practice" and provides:

> "The powers conferred by Part II of Schedule 1 shall be exercised in the circumstances specified in Part I of that Schedule".

The power to intervene is also expressly given in respect of a recognised body by s. 32 of the 1985 Act. This provides that:

> "the powers conferred by Part II of Schedule 1 to the 1974 Act shall be exercisable in relation to the recognised body and its business in like manner as they are exercisable in relation to a solicitor and his practice".

71. Part I of Schedule 1 to the 1974 Act is headed "Circumstances in which Society may Intervene". The circumstances in which the powers conferred by Part II are exercisable include:

> "1(1) ... where
>
> (a) the Society has reason to suspect dishonesty on the part of-
>
> (i) a solicitor ...
>
> in connection with that solicitor's practice or former practice ...
>
> (aa) the Society has reason to suspect dishonesty on the part of a solicitor ("S") in connection with -
>
> (i) the business of any person of whom S is or was an employee, or of any body of which S is or was a manager; or
>
> (ii) any business which is or was carried on by S as a sole trader ... "

Section 32 of the 1985 Act contains similar provisions in respect of a recognised body including:

"(d) the Society has reason to suspect dishonesty on the part of any manager or employee of a recognised body in connection with –

(i) that body's business ... ".

72. By s. 35(a) of the 1985 Act, when applying Part II of Schedule 1, "any reference to the solicitor or to his practice shall be construed as including reference to the body ... in relation to which the powers conferred by that Part of that Schedule are exercisable".

73. Part II of Schedule 1 to the 1974 Act contains the "Powers Exercisable on Intervention". It includes important provisions setting out the manner in which interventions can be challenged.

74. Paragraph 6 provides for the vesting in the Society of "any sums of money to which this paragraph applies". Setting out part of these provisions:

"6(2) This paragraph applies –

(a) where the powers conferred by this paragraph are exercisable by virtue of paragraph 1, to all sums of money held by or on behalf of the solicitor or his firm in connection with –

(i) his practice or former practice,

...

(3) The Society shall serve on the solicitor or his firm and on any other person having possession of sums of money to which this paragraph applies a certified copy of the Council's resolution and a notice prohibiting the payment out of any such sums of money.

(4) Within 8 days of the service of a notice under sub-paragraph (3), the person on whom it was served, on giving not less than 48 hours' notice in writing to the Society and (if the notice gives the name of the solicitor instructed by the Society) to that solicitor, may apply to the High Court for an order directing the Society to withdraw the notice.

(5) If the court makes such an order, it shall have power also to make such other order with respect to the matter as it may think fit."

75. Paragraph 9 deals with the production and delivery up of documents and applies to "all documents in the possession or under the control of the solicitor or his firm in connection with his practice". A notice is served under paragraph 9(7).

76. Paragraph 9 has similar provisions to those in paragraph 6 in respect of the procedure for challenging a notice given in respect of documents. In particular, by paragraph 9(9),

any notice in response must "be given within 8 days of the service of the Society's notice under sub-paragraph (7)".

77. The intervention procedure "has been recognised as "draconian" in some respects, but necessary for the protection of the public interest; and the courts have repeatedly emphasised the "balancing exercise" which it involves.": *Holder v Law Society* [2003] 1 WLR 1059, Carnwath LJ (as he then was), at [31].

Costs

78. Paragraph 13 of Schedule 1 to the 1974 Act provides:

> "Subject to any order for the payment of costs that may be made on an application to the court under this Schedule, any costs incurred by the Society for the purposes of this Schedule, including, without prejudice to the generality of this paragraph, the costs of any person exercising powers under this Part of this Schedule on behalf of the Society, shall be paid by the Solicitor or his personal representatives and shall be recoverable from him or them as a debt owing to the Society."

Costs are recoverable also from a recognised body: see s. 35(a) of the 1985 Act.

79. Paragraph 13A provides:

> "(1) The High Court, on the application of the Society, may order a former partner of the solicitor to pay a specified proportion of the costs mentioned in paragraph 13.
>
> (2) The High Court may make an order under this paragraph only if it is satisfied that the conduct (or any part of the conduct) by reason of which the powers conferred by this Part were exercisable in relation to the solicitor was conduct carried on with the consent or connivance of, or was attributable to any neglect on the part of, the former solicitor".

The provisions of this paragraph are exercisable in respect of a manager by s. 35(g) of the 1985 Act:

> "(g) paragraph 13A of (Schedule 1) is to be read as if references to a former partner were references –
>
> (i) in the case of a recognised body which is a partnership, to a former partner in the partnership, and
>
> (ii) in any other case to a manager or former manager of the recognised body".

This last provision is relied on by Mr Cawson in support of his submission that Mr Blavo cannot be liable as a manager for the intervention costs unless an order has been made by the High Court.

80. Section 71 of the 1974 Act has been held to extend the right to apply for an assessment to a solicitor from whom the SRA is seeking to recover the costs of an intervention: *Pine v Law Society (No 2)*, at [27]. The solicitor can obtain an assessment "as if he were the client": *Tim Martin Interiors Ltd v Akin Gump LLP* [2012] 1 WLR 2946, at [32].

(b) Liquidated Sum

81. Section 267 of the 1986 Act sets out the requirements for a creditor's petition which include:

> "(2) Subject to the next three sections, a creditor's petition may be presented to the court in respect of a debt or debts only if, at the time the petition is presented:
>
> (a) the amount of the debt, or the aggregate of the debts, is equal to or exceeds the bankruptcy level,
>
> (b) the debt, or each of the debts, is for a liquidated sum payable to the petitioning creditor ... either immediately or at some certain, future time, and is unsecured,
>
> (c) the debt, or each of the debts, is a debt which the debtor appears unable to pay or to have no reasonable prospect of being able to pay, and
>
> (d) there is no outstanding application to set aside a statutory demand served (under section 268 below) in respect of the debt or any of the debts.
>
> ...
>
> (4) "The bankruptcy level" is £5,000 ...".

Inability to pay is established, pursuant to s. 268(1)(a), by service of a statutory demand requiring the debtor "to pay the debt", which has neither been complied with nor set aside.

82. Where an application is made to set aside a statutory demand, by r. 6.5(4) of the 1986 Rules the court "may" grant the application if the debt is disputed on substantial grounds, paragraph (4)(b) or if "the court is satisfied on other grounds that the demand ought to be set aside", paragraph (4)(d).

83. In *Pine v Law Society (No 1)* unreported 9th August 2000, HHJ Maddocks sitting as a Deputy High Court Judge, a solicitor (Mr Pine) appealed from the dismissal of his application to set aside a statutory demand served by the Law Society in respect, almost entirely, of costs paid by the Law Society to solicitors who acted in an intervention.

The judge decided that "the right to have a taxation would not be a ground for setting aside the statutory demand" (page 10). The solicitor's application for permission to the Court of Appeal was refused.

84. In *Pine v Law Society (No 2)* the Court of Appeal determined, as referred to above, that Mr Pine was entitled to seek a detailed assessment under section 71 of the 1974 Act and that such an assessment would be conducted on the same basis as if the Law Society had sought an assessment under section 70. The judge in the present case considered that this decision supported the conclusion that the liability under paragraph 13 is not, generally, for a liquidated sum. In *Pine v Law Society (No 2)* Sir Andrew Morritt V-C referred to the previous proceedings without apparent disapproval (and, it must be said, without mentioning the judgment which is not listed as having been put before the court). Of perhaps more relevance, he accepted the submission made on behalf of Mr Pine that "all ... paragraph (13) did was to create a liability by the mechanism of a debt": at [26] and [27].

85. The meaning of the expression "liquidated sum" was extensively considered in *McGuiness*. Patten LJ undertook an analysis of the historical origins of the difference between those debts which could found a creditor's petition and those which could not. The expression used to identify the former, in the Bankruptcy Act 1869 and subsequent legislation, was that the debt had to be for a "liquidated sum". Reaching back to 1792, Patten LJ quoted from Lord Kenyon CJ's judgment, giving the "unanimous opinion" of the court, in *Utterson v Vernon* (1792) 4 Term Rep 570 at 571:

> "It is clear, that where one person, previous to his bankruptcy, is indebted to another in a precise sum which is ascertained, the latter may prove his debt under the commission; but it is as clear, that where there is only a cause of action existing ... where the debt remains to be inquired into, there the creditor cannot prove his debt under the commission".

86. This and other authorities led Patten LJ to conclude that "a debt for a liquidated sum must be a pre-ascertained liability" such as "a contractual liability where the amount due is to be ascertained in accordance with a contractual formula or contractual machinery which, when operated, will produce a figure", at [36], or a claim for liquidated damages, at [37]. He considered *Re Ward, ex p Ward* (1882) 22 Ch D 132 to be an "obvious example of that". In that case the Court of Appeal had determined that "the claim was for a debt in a liquidated sum because the incorporation of the Stock Exchange rules into the contract meant that the contract itself provided the means of ascertaining the amount due": at [32].

Submissions

87. The case has been comprehensively analysed by counsel for each party. I propose only to summarise their respective submissions in this judgment.

88. Mr Coleman submitted, in respect of the first issue referred to above, that the liability created by paragraph 13 of Schedule 1 is a liability for a liquidated sum. He first emphasised that the costs being claimed, as a debt, were costs incurred *by* the Society.

The judge had been wrong to say that they were costs "incurred ... by a solicitor intervening agent" (paragraph 47) and, as a result, had wrongly conflated the circumstances in this case with those where a solicitor issues a statutory demand for their own fees.

89. Next he submitted, by adapting the formulation set out in *McGuiness*, at [36], that the "amount due is to be ascertained in accordance with" the statutory machinery which produces "a figure". The debt to which this machinery gives rise, namely "any costs incurred by the Society for the purposes of this Schedule", is a "pre-ascertained liability" within the reasoning of *McGuiness*.

90. Mr Coleman further submitted that the fact that a person liable under paragraph 13 can seek an assessment under the provisions of section 71 of the 1974 Act, as decided by *Pine v Law Society (No 2)*, does not affect the question of whether the debt is liquidated.

91. I should also note that he made further submissions in respect of the issue referred to in paragraphs 38 to 43 above, which I do not propose to set out given my conclusion on that issue.

92. In respect of the Respondent's Notice, Mr Coleman made the following submissions in support of his case that Mr Blavo has advanced no grounds on which the judge should have set the statutory demands aside.

93. First, relying in particular on *Holder v Law Society*, that the statutory scheme does not conflict with the ECHR by requiring any challenge to an intervention to be made within the stipulated 8 day period. The judge was, therefore, right to reject Mr Blavo's argument that to prevent him challenging the costs through a challenge to the intervention would be a breach of the ECHR. Further Mr Blavo could have applied for an assessment under s. 71 and/or could have sought to challenge the costs on public law grounds: *Pine v Law Society (No 2)*, at [32].

94. Secondly, in respect of Mr Blavo's case as to the limited extent of his liability, Mr Coleman submitted that the business conducted by the Company was Mr Blavo's "practice" for the purposes of the regulatory scheme. He advanced six points: (i) Mr Blavo was a solicitor with a practising certificate; (ii) Mr Blavo practised as a solicitor through the recognised body, as a manager and an interest holder; (iii) Mr Blavo's involvement in the recognised body satisfied the regulatory requirements as to management and ownership and, thereby, enabled the Company to provide legal services; (iv) The Company could only provide legal services which its authorised persons (being managers or employees) could ordinarily provide; (v) Mr Blavo had wide-ranging regulatory obligations as a solicitor, as manager and as owner of the Company; (vi) Mr Blavo's practice included these regulatory responsibilities which were extensive, encompassing his obligations as a solicitor (including as COLP and COFA), as a manager and as an owner.

95. Mr Cawson's response to the SRA's case on whether the debts were liquidated was that, because the sums claimed by the Society are for work done by solicitors, the principles governing the recovery of fees claimed by a solicitor are directly applicable. He submitted that it cannot matter that the claim is being made by the Law Society rather than the solicitor who undertook the work. It remains a claim for solicitor's fees

"that have neither been expressly agreed in advance nor the subject of a judicial assessment" and, as such, they are "*ex hypothesi* unliquidated", applying, among other cases, *Turner v Paloma*. Mr Cawson also submitted that the case, which he said was being advanced by the SRA, namely that paragraph 13 has the effect of making the general principles governing the recovery of solicitors' fees inapplicable, had been rejected in *Pine v Law Society (No 2)* at [24] to [34].

96. Secondly, Mr Cawson submitted that the sums cannot be liquidated because the statutory right to an assessment has not been lost.

97. Mr Cawson's submissions in respect of the Co-Extensiveness issue had two elements. First, that Mr Blavo had no practice, and no monies or documents held in connection with that practice, which could have been the subject of an intervention. Secondly, if he did have a practice, it was not co-extensive with the Company's business and, accordingly, the costs would need to be apportioned before the extent of Mr Blavo's liability, if any, could be determined. There had been no enquiry into what the costs of an intervention into his practice might have been and no material before the judge as to whether they did or might have exceeded £5,000.

98. Mr Cawson submitted that the legislation specifically recognises that a solicitor might be involved in a business which is distinct from their practice. He pointed, by way of an example, to paragraph 1 of Schedule 1 to the 1974 Act which distinguishes between, in paragraph 1(1)(a), dishonesty on the part of a solicitor "in connection with that solicitor's practice" and, in paragraph 1(1)(aa)(i), dishonesty on the part of a solicitor in connection with "the business ... of any body of which (the solicitor) is or was a manager" or any business carried on by the solicitor as a sole trader.

99. He also pointed to the provisions of paragraphs 6 and 9 of Schedule 1 which deal respectively with money "held by or on behalf of the solicitor or his firm in connection with ... his practice or former practice" and with documents "in the possession or under the control of the solicitor or his firm in connection with his practice or former practice". Accordingly, Mr Cawson submitted that the relevant monies and the documents must relate or be attributable to a practice conducted by Mr Blavo distinct from the business conducted by the recognised body.

100. Mr Cawson submitted that the word "firm" in the 1974 Act should be interpreted in line with the position as it was in 1974 when solicitors could only practise as sole practitioners or in a partnership. The 1985 Act made the powers conferred by Part II of Schedule 1 exercisable in relation to a recognised body and its business, "in like manner as they are exercisable in relation to a solicitor and his practice": paragraph 32, Schedule 2 to the 1985 Act. If it had been intended that the word "firm" should have a broader meaning, it would have been amended or specifically extended.

101. Mr Cawson also relied on the provisions of paragraph 13A of Schedule 1, as applied by s. 35 of the 1985 Act to a manager of a recognised body. He submitted that, as a result of these provisions, a specific order is required before intervention costs can be recovered from a manager.

102. On the Exclusive Remedy issue, Mr Cawson submitted that Mr Blavo should be entitled to challenge the intervention costs on the basis that there had been "no lawful or proper

or reasonable grounds" for any intervention including into such practice, as any, that he had. This was based, in summary, on the submission that, confining Mr Blavo's ability to challenge the costs by confining his ability to challenge the interventions to the remedies provided by the statutory scheme (under paragraphs 6 and 9 of Schedule 1 to the 1974 Act), would be to deny him an effective remedy in breach of his rights under the ECHR including A1P1. Mr Blavo should be entitled to argue that the interventions were flawed and that, in consequence, he should not be liable for any of the costs.

103. Mr Cawson did not pursue the argument that, when the SRA intervenes in the business of a regulated body, it has no separate power to intervene in the practice of a solicitor involved as a manager and/or shareholder.

Determination

104. To repeat, Mr Blavo was a solicitor with a practising certificate; the Company was a recognised body; and Mr Blavo was the sole shareholder of the Company and, at the date of the interventions, was the sole manager.

(i) The Liquidated Sum Issue

105. The judge decided that the amounts claimed by the Society were not liquidated debts by application of the general principle that sums claimed by a solicitor are for a reasonable amount.

106. In determining this issue, I must clearly apply the approach set out in *McGuiness*. As set out above, Patten LJ decided that "a debt for a liquidated sum must be a pre-ascertained liability" such as "a contractual liability where the amount due is to be ascertained in accordance with a contractual formula or contractual machinery which, when operated will produce a figure", at [36].

107. It is also relevant to identify why, in general, a claim by a solicitor for his charges is unliquidated. This is because the claim is "analogous to one ... for an unquantified sum" with the solicitor being entitled to "reasonable and fair remuneration for the work they have done": *Thomas Watts & Co v Smith* [1998] 2 Costs LR 59 at p. 73. I would emphasise "in general" because it is possible for a claim by a solicitor to be for a predetermined amount. For example, as was said by Evans LJ in *Turner v Paloma*, at p. 40 G:

> "If a solicitor wishes to be paid and is not in funds he will need to sue and prove that his charges were *either* expressly agreed *or* are reasonable charges" (my emphasis).

It is clear that the observations in that case, including that "the solicitor's claim is for a reasonable sum, whether by statute or at common law, not for a liquidated sum" (at p. 52 B/C), were not dealing with the situation when the amount of the fees had been expressly agreed. This can be seen from two quotes from the judgment of Evans LJ. First, p. 51 E:

> "Nothing in the Act (of 1843), or its successors, takes away the need for the solicitor to prove that his fees are reasonable, if they

> are challenged, absent an express agreement as to what they should be."

Secondly, at p. 52 D/E, when Evans LJ refers to that case as not being one in which "the client agreed to pay for as many hours as the solicitor in fact worked". This was in response to an argument on behalf of the solicitor that, because the hourly rate had been agreed, the client must be taken to have also agreed "to pay that amount for every hour" the solicitor worked. This was understandably rejected as leading to the claim being for a liquidated sum.

108. In summary, if the amount of the fees has been expressly agreed, there is no reason why they cannot be for a liquidated sum.

109. I do not see that *Truex v Toll* [2009] 1 WLR 2121 decided other than in accordance with these principles. When Proudman J said that, "as a matter of principle ... a claim for solicitors' fees not as yet judicially assessed or determined is not a claim for a liquidated sum", she was referring to the position in general. This is made clear when she dealt with the "kind of agreement" the Court of Appeal had in mind in *Turner v Paloma*. It was a "prospective agreement" such as one "to pay a fixed sum", at [32].

110. Further, I would agree with Proudman J when she said that the "availability of assessment does not prevent an otherwise binding agreement converting what was previously the solicitor's mere estimate of proper costs into a liquidated sum capable of founding a petition", at [40]. She also referred previously, at [30], to a binding agreement including "an agreement as to a fixed amount".

111. It is clear to me that the basis or nature of a solicitor's claim for their charges is separate from the ability to seek an assessment. The existence of such a right does not turn what is otherwise a claim for a liquidated sum into a claim for an unliquidated sum.

112. I also do not consider that, as submitted by Mr Cawson, the SRA's case on paragraph 13 was rejected in *Pine v Law Society (No 2)*. That case was concerned with the question of whether a solicitor, who was liable to pay the intervention costs due under paragraph 13, could seek an order for taxation under s. 71 of the 1974 Act or whether the provisions of paragraph 13 "override or exclude the right conferred by section 71", at [34]. I appreciate that Sir Andrew Morritt said that the "code for intervention" created by Schedule 1 would not exclude a general right "created outside the code" absent "clear words or an obvious implication", at [28]; and that there "is no reason to think that the primary liability was so identified for the purposes of excluding a defence otherwise available to the person secondarily liable", at [29]. But these observations were made in respect of the contention that paragraph 13 excluded the right to seek taxation under s. 71 and not in the context of the submissions advanced in the present case, namely that the debt was not liquidated, which do not feature at all.

113. In my view Sir Andrew Morritt's observations do not address the question of whether the sum claimed is liquidated because, as set out above, this issue is distinct from the issue of whether the person liable can seek a taxation or assessment. This can be seen, in particular, from the provisions of s. 70(3) of the 1974 Act as referred to below.

114. The question is, therefore, simply whether paragraph 13 creates a "pre-ascertained liability" and, accordingly, a debt for a liquidated sum.

115. Applying the approach set out in *McGuiness*, is the sum due under paragraph 13 a pre-ascertained liability? Is it, adapting Patten LJ's words, a liability where the amount due is to be ascertained in accordance with a pre-determined formula or machinery which, when operated, will produce a figure? In my view, the unequivocal answer to both questions is yes. The statutory provisions, namely "any costs incurred by the Society for the purposes of this Schedule ... shall be paid by the Solicitor", constitute a pre-determined formula or machinery which, when applied, will produce a figure. This creates a debt for a liquidated sum.

116. As referred to above, I do not consider that it is now open to Mr Blavo to seek to challenge the sums claimed in the statutory demands as not being "costs incurred". This does not mean, of course, that a defence cannot otherwise be advanced, or r. 6.5(4)(b) of the 1986 Rules, would be otiose. Nor does it mean that, subject to the relevant provisions, an assessment cannot be sought. But neither of these issues affect the liquidated character of the sum due.

117. In contrast, the judge considered that the existence of a right to an assessment was "inconsistent with the proposition that, as a generality, the liability under paragraph 13 is a pre-ascertained one" and that it would be odd if "the underlying basis for the statutory debt was generally an unliquidated sum ... but the statutory debt was not". I do not agree. First, as referred to above, the right to an assessment does not mean that the debt is not a liquidated sum. Secondly, I do not see a dichotomy between the character of the Law Society's liability to the solicitors instructed in the intervention and the liability created by paragraph 13.

118. Additionally, the judge's observations conflict with the provisions of s. 70(3) which apply to s. 71. Under s. 70(3)(b), an application for an assessment can be made even "after a judgment has been obtained for the recovery of the costs covered by the bill". As Lewison LJ pointed out during the hearing, the judge's view that the right to an assessment would be inconsistent with or would sit oddly with the debt under paragraph 13 being for a liquidated sum would, even as a generality, conflict with those provisions. This supports the conclusion that, as submitted by Mr Coleman, the right to an assessment does not impact on whether the debt created by paragraph 13 is for a liquidated sum.

119. Finally, I would just note that this conclusion is the same as that reached, albeit it seems without argument, by Blackburne J in *Pyke v Law Society*, at [10], when he said that paragraph 13 created "a statutory debt" which was "liquidated in amount and is presently payable". It is also, at least, consistent with the decisions in *Pine v Society (No 1)*, which, as I have said, was referred to without comment by Sir Andrew Morritt in *Pine v Law Society (No 2)*, and *Miller v Law Society* [2002] 4 All ER 312 although the point does not appear to have been raised in the latter case.

120. Another way of looking at the issue is as expressed in the skeleton argument prepared for this appeal by previous counsel for Mr Blavo, namely any debt "which requires some further act or proceeding in order to reach a certain and fixed value, is to be categorised as unliquidated". The answer in this case is that the costs claimed under

paragraph 13 required no further act or proceeding to make them "a certain and fixed value" because the provisions of the paragraph provide "the means of ascertaining the amount": *McGuiness* at [32]. The fact that the costs incurred have been incurred by way of solicitor's fees does not import into paragraph 13 the general principles applicable to the recovery of such fees.

(ii) The Co-Extensiveness Issue

121. In order for the regulatory system to operate in the public interest it is obvious that the Law Society's powers must have been intended to extend to cover all ways in which a solicitor might practise. Any other approach would not be consistent with the "regulatory objectives" as set out in s.1 of the 2007 Act.

122. The key questions are: (i) was Mr Blavo practising as a solicitor; (ii) if he was, what was the extent of his practice; and (iii) did the intervention in the Company extend beyond the intervention in his practice and, if so, to what extent. I propose, first, to consider (i) and (ii) by reference to the regulatory framework before turning to the address the intervention framework.

(i) Was Mr Blavo practising as a solicitor?

123. As will be apparent from the summary of the legal framework set out above, and as the judge noted, the concepts of "practising as a solicitor" and "practice" are far broader than the question of whether Mr Blavo had "the conduct of any client files" or "had any client practice" as asserted by him in his statement. For example, and importantly in the context of this case, the "ways" in which a solicitor can practise "as a solicitor" include as a manager and/or as an interest holder of an authorised body: r. 1.1 PFR 2011. This is subject to the proviso (in simplified terms) that all the work they do is either work the body is authorised to carry out *or* work "done for the body itself". There is nothing to suggest that the work Mr Blavo did does not fall within this latter stipulation.

124. Further, a solicitor *will* be practising as a solicitor, and require a practising certificate, when they are "involved in legal practice" and their "involvement in the firm or the work depends on (them) being a solicitor": r. 9 of the PFR 2011. It is self-evident that the manner in which a solicitor can be "involved" in legal practice will include the "ways" in which a solicitor is permitted to practise as defined by r. 1.1 and, accordingly, will include as a manager and/or interest holder. This is further made clear by r. 11.1 of the PFR 2011 which provides that a solicitor who is a manager and/or an interest holder "must" be such in their "capacity as a solicitor".

125. Mr Blavo was, therefore, clearly "involved" in legal practice because of his involvement in the Company as a manager and an interest holder. Further, his involvement in the "firm", namely (pursuant to the definition in the 2012 Glossary) the Company as an authorised body, depended on him being a solicitor pursuant to r. 13.1 of the PFR 2011. The Company's status in the regulatory framework depended on Mr Blavo, as the sole owner, being a solicitor. Additionally, its status depended on Mr Blavo being a solicitor with a practising certificate certainly at the date of the interventions, if not previously, because he was the sole manager. It is also worth noting

that he was approved to have these roles because he was a solicitor with a practising certificate: r. 13.2 of the AR 2011.

126. In answer to (i), therefore, Mr Blavo was practising as a solicitor because he was involved in legal practice and his involvement in the Company depended on his being a solicitor.

(ii) What was the extent of Mr Blavo's practice?

127. The term practice means "the activities, in that capacity", of a solicitor: 2012 Glossary. What was the extent of Mr Blavo's activities which he conducted in the capacity of solicitor?

128. Rule 11.1 of the PFR 2011 stipulates that the capacity in which a solicitor is a manager and/or an interest holder of a recognised body "must" be as a solicitor. Accordingly, Mr Blavo's activities as a manager and as an interest holder must have been in his capacity as a solicitor. Additionally, for the avoidance of doubt, it is clear that his activities as manager and as owner of the Company were "in that capacity" because, as referred to above, the Company's status depended on him being a manager and an owner who was a solicitor.

129. As sole owner and sole manager (as director) at the date of the interventions Mr Blavo had complete control of the management and operation of Company. In those circumstances, it is difficult to see how the Company's business would not all be within the scope of Mr Blavo's activities or, to put it the other way round, how Mr Blavo's activities as a solicitor did not extend to the whole of the Company's business.

130. In answer to (ii), therefore, Mr Blavo's involvement in the firm, in his capacity as a solicitor, was such that, in my view, as submitted by Mr Coleman, the business conducted by the Company was Mr Blavo's practice for the purposes of the regulatory framework. I would add that this conclusion is fortified by the extent of Mr Blavo's regulatory obligations as a solicitor (including as COLP and COFA), as a manager and as owner.

(iii) Did the intervention in the Company extend beyond the intervention in Mr Blavo's practice and, if so, to what extent?

131. The answer to this question might seem to have been answered by my conclusion above as to the extent of Mr Blavo's practice. However, it is necessary to consider whether the provisions of the 1974 Act dealing with an intervention provide a different answer.

132. The powers provided by paragraph 6 of Schedule 1 to the 1974 Act apply to "all sums of money held by or on behalf of the solicitor or his firm in connection with (i) his practice or former practice ...".

133. The powers provided by paragraph 9 apply to "all documents in the possession or under the control of the solicitor or his firm in connection with his practice or former practice ...".

134. I do not accept Mr Cawson's submission that the word "firm" is to be construed as meaning only partnership because in 1974 a solicitor could only practise as a sole practitioner or in a partnership. The word is not defined in the Act and, to make sense of the provisions, clearly has to be related to the ways in which a solicitor can practise. Further, for the reasons given above, I consider that, unless constrained otherwise, terms used across the different parts of the regulatory framework should be interpreted consistently. Any other approach would be inconsistent with achieving what must have been the intention, namely to have a comprehensive and consistent structure.

135. Accordingly, in my view, the interpretation of the terms "firm" and "practice" in the 1974 Act is informed by and should be consistent with their meaning in the SRA Rules including as provided by the 2012 Glossary. In the context of, for example, paragraph 6 of Schedule 1, it makes sense that the solicitor's "practice" should mean "the activities, in that capacity, ... of a solicitor". Likewise, because a solicitor can practise as a manager or an interest holder of an authorised body (r. 1.1 PFR 2011) and, indeed, can only be a manager or an interest holder in their capacity as a solicitor (r. 11.1 PFR 2011), it would not make sense to interpret the word "firm" as other than including an authorised body. This approach ensures that the powers of intervention are matched to the ways in which a solicitor can practise.

136. This approach is, additionally, consistent with the structure of Schedule 1 to the 1974 Act. As Lewison LJ pointed out during the hearing, it is difficult to see how the provisions of paragraphs 1(a) and 1(aa) of Schedule 1 would operate if the powers under paragraphs 6 and 9 were confined to sole practitioners or partnerships. The Schedule is addressing interventions in a solicitor's practice and, by paragraph 1(aa), gives the Society power to intervene when it has reason to suspect dishonesty on the part of a solicitor "in connection with ... the business ... of any body of which (the solicitor) is or was a manager or ... any business which is or was carried on by (the solicitor) as a sole trader". These provisions require the words "firm" and "practice" in paragraphs 6 and 9 to be construed more broadly than submitted by Mr Cawson.

137. The words used in paragraphs 6 and 9, "in connection with", are very broad and, given my conclusions as set out above, there is no reason to conclude that the money and documents held by the Company and/or by Mr Blavo were held other than "in connection with his practice".

138. I should make clear that I do not doubt that the extent of *a* solicitor's practice might differ from the extent of the business of a recognised body of which he is a manager and/or interest holder. It a question of fact in the individual case. In this case, the answer to (iii) is consistent with the answers to (i) and (ii), namely that the intervention in the Company and its business did not extend beyond the intervention in Mr Blavo's practice because all the money and the documents held by or on behalf of Mr Blavo *and/or* the Company were held in connection with his practice.

139. It is, therefore, not necessary for me to address the question of whether the debts claimed exceeded the bankruptcy level. I would, however, add that if this point had been material it would have been necessary for the Respondent to advance a more active case that he did. There was no sustained attempt to raise this issue and, on the information available to the judge, I would agree with the Law Society's case that it

was "plain" that "on any view" the debts due would not be reduced below the bankruptcy level.

140. I should also address Mr Cawson's case in respect of paragraph 13A of Schedule 1. As referred to above, he submits that Mr Blavo cannot be liable for any costs as a manager absent an order under this provision.

141. Intervention costs are payable by the solicitor or by the recognised body under paragraph 13. Paragraph 13A gives the court power to order a former partner of the solicitor or a manager or former manager to pay part of the costs. In my view, it is clear that these provisions do not impact on the extent of the solicitor's liability to pay costs *as a* solicitor even though they are also a manager. The question is, rather, what is the scope of the solicitor's activities as a solicitor for the purposes of the intervention. This will depend on the circumstances of the case.

(iii) The Exclusive Remedy Issue

142. In my view the "exclusive remedy" argument is without substance and the judge was right to reject it. There is no reason to distinguish the conclusion reached in *Holder v Law Society* on the basis that we are concerned with the costs of an intervention rather than the intervention itself. The conclusion, that the powers provided by the legislation and the process provided for challenging the exercise of those powers are compliant with the ECHR, applies equally to any proposed challenge to an intervention for the purpose of seeking to challenge the intervention costs.

143. There are powerful public policy reasons why any challenge to an intervention has to take place within a very short period. Put simply it is in the public interest as well as in the interests of the solicitor that any challenge must be made and addressed very quickly.

144. In *Holder v Law Society* Carnwath LJ specifically addressed the argument that the intervention process infringed the rights protected by the ECHR. After referring to the "balancing exercise", Carnwath LJ said, at [31]:

> "I see no material difference between this and the "fair balance" which article 1 requires. Nor do I see any reason why the Human Rights Act 1998 should be thought to have changed anything ... I see no arguable grounds for thinking that the margin allowed to the legislature has been crossed ...".

This decision has been followed in *Sheikh v Law Society* [2006] EWCA Civ 1577, in which Chadwick LJ noted that the argument that the intervention procedure was incompatible with the solicitor's Convention rights had been rejected in *Holder*, at [110]. It was also applied by Sharp J (as she then was) in *Gadd v Law Society* [2012] EWHC 2843 (QB), at [38]; permission to appeal from this decision was refused, [2013] EWCA Civ 837.

145. Even if we were not bound by the decisions in *Holder* and *Sheikh*, there is no reason in this case to permit Mr Blavo to seek to challenge the interventions. As set out in his

statement, he considered whether to do so at the time and decided not to challenge the decision to intervene. It is now too late for him to seek to do so.

146. In conclusion, for the reasons set out above, there are no grounds for setting the statutory demands aside. I would, therefore, allow the appeal and dismiss the Respondent's Notice.

Lord Justice Lewison:

147. I agree.

Lord Justice Patten:

148. I also agree.