

**CITY OF LONDON LAW SOCIETY**

**EMPLOYMENT LAW COMMITTEE**

**MINUTES OF MEETING HELD AT THE OFFICES OF NORTON ROSE LLP,  
3 MORE LONDON RIVERSIDE, LONDON SE1 2AQ**

**On 12<sup>th</sup> March 2008 at 12:45 p.m.**

In attendance:

Raymond Jeffers (Chairman)	Linklaters
Elaine Aarons (Vice Chairman)	Withers
Gary Freer (Secretary)	McGrigors
Elizabeth Adams	Beachcrofts
Catherine Brearley	Stephenson Harwood
Helga Breen	Lawrence Graham
Oliver Buttle	White & Case
John Farr	Herbert Smith
Anthony Fincham	CMS Cameron McKenna
Ian Hunter	Bird & Bird
Alan Julyan	Speechly Bircham
Jane Mann	Fox Williams
Laurence Rees	Reed Smith Richards Butler
Julian Roskill	Mayer Brown International
Charles Wynn-Evans	Dechert

Absent with apologies:

William Dawson	Farrers
Mark Mansell	Allen & Overy
Geoffrey Tyler	Pinsent Masons

1 Apologies for absence

These were received as noted above.

2 Minutes of meeting and matters arising

The conference for the Employment and Labour Law of the International Bar Association was now fully booked.

3 James v Greenwich – Agency Workers

The Court of Appeal's decision in this case had tidied up the law to some extent but elements of uncertainty remain in individual cases.

The policy-driven interpretation of the laws put forward by Sedley LJ in *Brook St v Dacas* has been decisively rejected, but legislative developments in Europe and the UK are to be expected.

4 TUPE – *Holis v GMB*

This case confirms that in principle there can be a cross border TUPE transfer. Technically much of the decision is obiter, and it has raised more questions than it has answered. It is thought that the recent UK amending legislation in relation to changes of service provisions made "cross-border" claims more likely, and since some other EU states have not similarly amended their domestic legislation it is possible to foresee conflict of interest issues. There remains the general problem of whether liability should be borne by transferor, transferee or both.

Concern was also expressed that the recent decision of the EAT in *CAB Automotive v Blake* will make it more likely that prospective purchases of businesses and assets from administrators may be deterred from doing so and that this is contrary to the "rescue culture" which the UK Government says it wishes to promote.

5 Age Discrimination

Members reported seeing only a trickle of cases. The decisions in *Hampton* [2008] IRLR 258 and *Seldon v Clarkson Wright & Jakes* ET/1100275/2007 concern succession planning as justification for mandatory retirement, and produced different outcomes. These may be partially explained by the relatively small size of the Partnership in *Seldon*, in which succession planning was therefore more crucial.

6 Trust and confidence – *RDF Media v Clements*

Aspects of the decision of Bernard Livesey QC in this case – particularly in relation to the operation of the implied term of trust and confidence during garden leave – were difficult to follow. They may be clarified if and when the case goes to the Court of Appeal.

7 Any Other Business

Raymond Jeffers reported that Stella Dunne had left her post at CLLS, to be replaced by Robert Leader.

It was noted that there had been a recent resurgence of political and press comment about the "payments for failure" issue and this year's new guidelines from the ABI and NAPF were slightly more robust than before. The banking industry in particular felt itself under pressure to try to structure bonus schemes with a longer term perspective and to reflect team and individual "underperformance" in bonus awards.

8 Date of Next Meeting

11<sup>th</sup> June at Mayer Brown International.