

CLLS MEETING MINUTES

**City of London Law Society
Employment Law Committee Meeting
at the offices of Baker & McKenzie LLP, 100 New Bridge Street, London EC4V 6JA
on 7 December 2011**

In attendance:

Paul Griffin	Norton Rose
Ian Hunter	Bird & Bird
Anthony Fincham	CMS Cameron McKenna
Alan Julyan	Speechly Bircham
Sian Keall	Travers Smith
Michael Leftley	Addleshaw Goddard
John Evason	Baker & McKenzie LLP
Jane Mann	Fox Williams
Charles Wynn-Evans	Dechert
William Dawson	Farrer & Co
Helen Breen	Lawrence Graham
Geoff Tyler	Pinsents
Oliver Brettle	White and Case
David Harper	Hogan, Lovells
Kate Brearley	Stephenson Harwood

Absent with apologies:

Gary Freer (Chairman)	McGrigors
Elaine Aarons (Vica Chairman)	Withers
Nick Robertson	Mayer Brown
Elizabeth Adams	Beachrofts
Mark Mansell	Allen & Overy

1. MINUTES OF LAST MEETING

The Minutes of the last meeting were approved.

2. MATTERS ARISING

There were no matters arising.

3. BIS - REFORM TO JOB LAWS TO HELP BUSINESS

(a) Call for evidence - collective redundancy consultation rules

There was a brief discussion about the scope of the call for evidence. A large part of the consultation relates to experience of employers in relation to previous consultations and the Government is seeking views as to whether it is appropriate to have a 90-day period of consultation or whether it should be less or there could be different thresholds. There was a discussion as to whether the 30 days minimum period would be sufficient for the purposes of the Directive. A view was expressed that it would be sufficient given that there is still an obligation to carry out meaningful consultation in the UK and that the 30-day would be a minimum period only.

- (b) Call for evidence - the Transfer of Undertakings (Protection of Employment) Regulations 2006.

The consultation paper was summarised. A view was expressed that the service provision sections in TUPE 2006 were helpful and gave certainty which was absent before TUPE 2006. With a few exceptions, employers can implement their plans and know where they stand. On this basis some members felt that it would be detrimental to move away from this position now although it was noted that what amounts to a transfer in the UK is broader in the light of the service provision change provisions than in countries such as Germany, France and elsewhere in Europe. There was also a comment made that even with the new service provision change provision in TUPE 2006, points were being run as to what is an activity with parties to disputes looking for areas of uncertainty. One attendee commented that clients have complained about the service provision changes provisions where the client wants to end a contract but realises that the new service provider will inherit the contractor's staff in circumstances where they have been receiving an unsatisfactory service.

It was agreed that the CLLS should respond to these papers and Mark Mansell, Gary Freer and Michael Leftley would lead on this.

- (c) In the pipeline: the Government's response to resolving workplace disputes.

There was a discussion about a number of the possible initiatives suggested by the Government consultation on workplace disputes. One of these proposals regarded "Protected Conversations". A view was expressed that it would be difficult to determine the scope of "protected conversations". Some attendees were of the view that this would end up with the Government just legislating in respect of the current position on without prejudice conversations as a result of case law.

John Evason and Alan Julyan agreed to be involved in any response to any of these proposals (subject to timing).

4. DATES AND VENUES FOR NEXT YEAR.

14 March 2012	William Dawson offered to host at Farrers but after the meeting has realised that there is difficulty with room allocations and will not be able to host. The new location will be notified in due course. Now confirmed Lawrence Rees: Reed Smith LLP.
13 June 2012	Bird & Bird
12 September 2012	Travers Smith
12 December 2012	Stephenson Harwood

5. CASES :

- (a) **Smith v Trustees of Brooklands College**

This case looked at where employers can make changes to terms and conditions following a TUPE transfer. As a result of the decision it was commented that it may be easier for employers to justify making changes to terms and conditions after a transfer of a business in certain limited circumstances. The view was expressed that this may arise where the employer was unaware of a past TUPE transfer when it made the changes to terms.

(b) NHS Manchester v Fecitt

This case looks at the tests for "detriment" under the whistleblowing regulations. It was noted that this is a different test to the test for dismissal under the same Act and this has been confirmed by the Court of Appeal in this case. There was also a discussion on the Court's decision that employers will not be vicariously liable under the Public Interest Disclosure Act for the acts of its employees.