

**MINUTES OF MEETING**  
**CITY OF LONDON LAW SOCIETY**  
**EMPLOYMENT LAW COMMITTEE**

**Meeting held at Gowling WLG, 4 More London Riverside, London SE1 2AU on  
Wednesday 6 December 2017 at 12:45 pm**

Gary Freer, Chair	Bryan Cave
Elaine Aarons, Vice Chair	Withers
Helena Derbyshire, Secretary	Skadden, Arps
William Dawson	Farrer
John Evason	Baker & McKenzie
Mark Greenburgh	Gowling WLG
Paul Griffin	Norton Rose Fulbright
Anthony Fincham	CMS Cameron McKenna LLP
Sian Keall	Travers Smith
Michael Leftley	Addleshaw Goddard
Mark Mansell	Allen & Overy
Nick Robertson	Mayer Brown
Charles Wynn-Evans	Dechert
Kevin Hart	CLLS

**Apologies**

Kate Brearley	Stephenson Harwood
Helga Breen	DWF
Oliver Brettle	White & Case
Jane Mann	Fox Williams

1. Apologies were received from those noted as absent.
2. The minutes of the last meeting were approved.
3. Matters arising

Following the resignation of Ian Hunter and Laurence Rees the Chair had taken steps to invite applications to the Committee. The group agreed that the Committee should be open to in-house lawyers and that upon joining the Committee new members should be reminded of ground rules for confidentiality and client privilege.

Taylor Review

The Chair had caught up with Diane Nicol. It seemed that the Treasury has taken a close interest in the Taylor Review. At the meeting of the Parliamentary Select

Committee with the members of the Taylor Review Panel there had been a focus on the gig economy and employee status rather than the broader issues that the Panel had identified. Members of the Committee would be attending an ELA event at which Matthew Taylor would be talking the following week.

#### 4. Feedback from CLLS Chairs' Meeting

The Chair had attended a meeting convened by Ed Sparrow, the Chair of the CLLS, for the chairs of the 18 different committees.

Kevin Hart had reported that this had been a positive meeting and that the work of the Committee was hugely appreciated by the Society's member firms and more widely.

It was noted that each of the committees' work tends to be responsive to government consultation. The CLLS wants to get ahead of the curve and proposals were made for the committees to speak with policymakers before their consultation papers are published. Examples were given of the financial, construction and commercial committees' intervention following the initial publication of consultation papers and draft legislation which he had been taken off the table as a result. The employment committee had had a significant influence with regard to gender pay gap legislation, for example.

The general feeling amongst the different committee chairs was that their committees could have a greater influence if they met the decision makers, rather than just submitting papers on their own.

There was also consideration as to whether the work and events of the specialist committees should be made open to broader membership, for example, the construction law committee has a training programme for junior construction lawyers in the City.

The Chair reported on a presentation from Project Associates, a PR company that is now available to work with all the specialist committees, who are encouraged to take up this opportunity.

It had been agreed that the Society should not require a separate Brexit Law Committee because many of the specialist committees had overlapping concerns with regard to Brexit.

It was likely, however, that a Data Protection Committee would be established and recommendations for members from member firms would be welcome.

There has been a discussion of setting up a specialist committee to deal with high-end net worth client work, but it was felt that this could put some of the specialist committees such as the Employment Law Committee, in conflict with each other. It was felt that, for the moment, this work is best left to the Revenue Law Committee.

The next meeting of the CLLS committee chairs would be in April/May 2018 with a view to holding an annual chairs' meeting in November.

#### 5. Tribunal Update

Anecdotally tribunal judges had found that there had already been a deluge in claims following the removal of tribunal fees. The Watford tribunal, for example, was listing two day cases ten months ahead.

It was noted that following the decline in cases when fees were introduced the tribunal service's budget had been reduced. This, in turn, meant that there were fewer tribunal/judge days available and many part time judges had become deskilled (they were just not sitting frequently enough). It was confirmed that a recruitment round of tribunal judges was anticipated but the appointment process and training of new judges takes some time. The recovery of fees paid has been an issue: a number of the Committee's members had prepared templates for their clients to claim these. There were also questions about time limits and the possible recovery, for example, of mediation fees that had been incurred in lieu of attending the tribunal. There were reports of claims by employees who assert that they would have brought a claim but for the fact that they had to pay a fee. The Committee was interested in the likely approach of the tribunals in, for example, unfair dismissal claims where time limits can be extended where it is not reasonably practicable to bring a claim.

## 6. Cases

### (i) *King v The Sash Window Workshop Limited*

In *King* the European Court of Justice (ECJ) had held that a worker was entitled to be paid on the termination of their appointment for any periods of annual leave that had accrued where the worker had been discouraged from taking the leave because it would have been unpaid. The ECJ had found that requiring a worker to take the leave before then suing for holiday pay was not an effective remedy and that there was no limit on the amount of leave that could be carried over where an employer does not allow workers to take paid leave. This position could have significant implications for workers who had been misclassified as independent contractors (so increasing the amount at stake in gig economy cases). There was a question as to whether or not the line of authorities would cast doubt on legislation that limits the back dating of holiday pay claims generally to two years. A claim for holiday pay crystallises only on the termination of employment (an employee cannot seek a payment in lieu until then). The implications might not be that significant given that wages act claims could be brought at that point in any event.

The Committee discussed the distinction between an employee who did not have the opportunity to take paid leave and an employee or worker who had not been paid for all of their leave but had been paid in part.

### (ii) *P v Commissioner of Police*

The Supreme Court had held that the Police Misconduct Panel did not have traditional immunity against an allegation of discrimination, enabling the police officer to pursue a claim in the employment tribunal as opposed to the Police Appeals Tribunal. This appears to conflict with a recent case concerning the GMC in which the Court held that an individual could not claim unlawful discrimination in the employment tribunal following the GMC's review of a decision on fitness to practice medicine. That decision had

been subject to a potential judicial review (which provided the requisite right of appeal).

The Committee considered that the decision in this case could potentially extend to cover fit and proper determinations in accordance with financial services rules.

7. Any other business

There was no further business.

Charles Wynn-Evans, Paul Griffin, Sian Keall each volunteered to host a meeting next year.

The next meeting would be on Wednesday 7 March 2018.