

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

**CMS Cameron McKenna Nabarro Olswang LLP, 78 Cannon Street**  
**London, EC4N 6AF**  
**on Wednesday 6 March 2019**  
**at 12:45 pm**

**In Attendance:**

Helga Breen	DWF
Oliver Brettle	White & Case
William Dawson	Farrer
Helena Derbyshire, Chair	Skadden, Arps
Anthony Fincham	CMS Cameron McKenna LLP
Kevin Hart	CLLS
Sian Keall	Travers Smith
Jane Mann	Fox Williams

**Absent:**

Elaine Aarons	Withers
Kate Brearley	Stephenson Harwood
John Evason	Baker & McKenzie
Mark Greenburgh	Mark Greenburgh
Paul Griffin	Norton Rose Fulbright
Michael Leftley	Addleshaw Goddard
Mark Mansell	Allen & Overy
Nick Robertson	Mayer Brown
Charles Wynn-Evans	Dechert

1. Apologies were received from those noted as absent.
2. The minutes of the last meeting were approved.
3. Matters arising
  - (a) The CLLS Committee has approved HD as Chair of this Committee.
4. Committee Membership
  - (a) The Chair made reference to Committee procedures around the conduct of, and attendance at meetings. It was agreed that members each appoint a regular proxy, attending by way of exception only, where proxies could be partners or associates. Pending the appointment of a permanent Secretary the member hosting the next series of meetings will be asked to provide to the Committee an individual of their firm to act as secretary for the meeting. In

the meantime, expressions of interest would be sought from members, with the aim being to appoint a new secretary by the next meeting in June.

(b) Recruitment

An advertisement seeking members (multiple members is acceptable) would be placed on the CLLS website and LinkedIn and sent to CLLS liaison partners in City firms and also to members of the Committee. Individuals can then apply by submitting their CVs to the Chair for approval by the Committee.

5. Report on BEIS EU Exit Business Readiness Forum

AF reported on a presentation at this Forum on pre-settled status for EU residents presently in the UK, and that while the £65 fee would still be charged for technical reasons, it would then be refunded to individuals. Overall it was felt important to make EU citizens part of the family in the UK. The process for acquiring settled status is simple and can be accessed on an android phone. Slides of the BEIS presentation would be circulated if and when received by AF. KH would enquire whether similar slides prepared by Laura Devine could be circulated to members.

6. ICAEW Corporate Governance Committee

We have been asked for members to sit on this Committee involving a two-year appointment renewable twice with four meetings (2 hours) a year and dinner. JM was interested to participate, and expressions of interest will be sought.

7. Discussion of Privilege in Investigations

The focus of this discussion was around attaching privilege to independent investigations. There was general discussion around the need to identify the purpose of a law firm's role, whether investigatory or advisory, the need to distinguish between these, and the practice in certain parts of the City where some firms were exhibiting reluctance to allowing their clients to be investigated by other firms. It was agreed that there was no one size fits all approach given the nature of different investigations, especially the implications caused by investigations carried out initially by in-house lawyers, the impact of international co-operations with head offices overseas and with different notions of privilege applying.

There was discussion about whether we should help identify best professional practice for members and the preparation of a checklist was discussed covering (i) the purpose/role of the law firm (ii) was the investigation being carried out in contemplation of litigation (iii) was any advice sought purely advisory or investigative (iv) should terms of reference be prepared to articulate the purpose of the lawyers and law firms role; (v) the need to identify the client (reference to Three Rivers case).

The Chair would liaise with Jonathan Kembery on the Professional Rules and Regulation Committee to identify issues.

8. NDAs

There was discussion around the recent Consultation paper on NDAs, proposing new rules to prevent misuse of NDAs and to protect individuals e.g. in the event of workplace abuse and harassment, and seeking responses by 29 April. We discussed the recommendation that in the context of Settlement Agreements, solicitors advising individuals be required specifically to confirm that they had explained the terms and effect of any confidentiality obligations to the individual in question, where a failure so to do could render the Settlement Agreement void. The view of the meeting was against this, preferring instead that the Settlement Agreement incorporate a standard notice, to the effect that any confidentiality obligation did not affect the right of the employee to make specific disclosures (including for whistleblowing purposes). It was agreed that JM would chair a working group on this, and that members would be invited to participate.

9. AOB

- (1) SK volunteered to participate at the Revenue Law Committee which is considering a consultation paper on Off-payroll working, where consultation closes on 25 May;
- (2) KH notified the meeting of the AGM on 17 June, the annual service on 13 May, and the Committee Chairs' meeting on 10 April;
- (3) It being AF's last meeting before his imminent retirement from the Committee, the Chair thanked AF for his huge contribution over many years. AF asked to be kept informed of next year's members dinner.