

Minutes of Meeting

City of London Law Society Employment Law Committee meeting at the offices of Speechly Bircham, 6 New Street Square, London EC4A 3LX at 12:45pm on 9 March 2011

In Attendance:

Gary Freer (Chairman)
Paul Griffin (Secretary)
Elaine Aarons (Vice Chair)
Alan Julyan
David Harper
Michael Leftley
Kate Brearley

McGrigors
Norton Rose
Withers
Speechly Bircham
Hogan, Lovells
Addleshaw Goddard
Stephenson Harwood

1 Apologies

Apologies were received from Jane Mann, Charles Wynn-Evans, Geoffrey Tyler, Ian Hunter, Mark Mansell, Nick Robertson, Siân Keall and John Evason.

2 Minutes of last meeting

There were no matters arising from the minutes of the last meeting other than the consultation document in relation to workplace disputes.

3 Matters arising

The Chairman canvassed whether there are any “big picture points” arising out of the consultation documents. He raised the issue of fees and noted that there were no proposals to consult on a fee to be charged to applicants in the tribunal process. One member noted that they will be consulting in the Spring in relation to this issue and therefore it is still an open question.

In addition it was noted that compulsory mediation/conciliation was not mentioned in the consultation documents. The committee were asked whether they thought it should be compulsory. Some members felt that it would increase costs and therefore act as a barrier to justice. It was felt unlikely that it would make a difference to the number of cases which would go all the way and therefore could represent a waste of public funds. Another member felt that employment cases were different from commercial cases and were more personal in nature and therefore potentially less likely to settle by way of mediation/conciliation.

4 BIS Consultation on Resolving Workplace Disputes

Q1 - 12

One member commented that in employment cases the mediation success was under 60%.

Q13

A member thought it was a good thing if there was to be earlier access to the COT3 in the settlement process. Another member said that he would not want to see increased use of the COT3 system to compromise an employment claim because ACAS will not compromise personal injury claims and they will also not include more commercial terms in the settlement agreement.

Q19

It was thought that there are too many variables. One member noted that there are disadvantages to low paid workers who would have to wait. Other points included, how do the employers defences get taken into consideration at this early stage? How is interim relief dealt with? Committee members felt that they would not want anything that would potentially increase delay.

Q21, 22, 23

Members discussed the power to strike out and the fact that the power could not be utilised at a CMD. There was some disagreement amongst members as to whether the power could be utilised at a CMD. One member felt that it may be in breach of the European Convention of Human Rights (Article 6) of the hearing. Other members offered the solution of making a CMD public so the power could be utilised. The same issues arose in relation to orders for deposits at CMDs. It was noted that if CMDs were public then it would be difficult for them to be conducted by telephone and one member questioned whether confidentiality might be a factor.

Q31

'Calderbank offers' - members thought that this was a possible solution if the effect of the Calderbank type offer could be explained to the parties.

Q31

Members could not see the sense in any sort of punitive award by way of a fine.

6 Recent cases

Most of the time was taken up with the consultation document and therefore the cases outlined on the agenda were not discussed.

7 AOB

There was no other business.