

## Minutes of Meeting

### City of London Law Society Employment Law Committee meeting at the offices at Addleshaw Goddard LLP, 60 Chiswell Street, London, EC1Y 4AG on 8<sup>th</sup> June 2011

#### In attendance:

Gary Freer (Chairman)  
Elizabeth Adams  
Kate Brearley  
Helga Breen  
Oliver Brettle  
William Dawson  
John Evason  
Anthony Fincham  
Ian Hunter  
Alan Julyan  
Sian Keall  
Michael Leftley  
Jane Mann  
Laurence Rees  
Nick Robertson

McGrigors  
Beachcroft  
Stephenson Harwood  
Lawrence Graham  
White & Case  
Farrer & Co  
Baker and McKenzie  
CMS Cameron McKenna  
Bird & Bird  
Speechly Bircham  
Travers Smith  
Addleshaw Goddard  
Fox Williams  
Reed Smith  
Mayer Brown

#### As a Guest:

David Hobart

CEO, City of London Law Society

#### Absent with apologies:

Elaine Aarons (Vice Chairman)  
Paul Griffin (Secretary)  
David Harper  
Charles Wynn-Evans

Withers  
Norton Rose  
Hogan Lovells  
Dechert

#### 1. Minutes of previous meeting and matters arising

The draft minutes were approved subject to minor amendments.

#### 2. Government Consultations

- a. The Committee had submitted a paper in response to the Government's Consultation on Resolving Workplace Disputes. There is no indication of when the Government will publish its response or its proposals on possible reforms of the Employment Tribunal System.
- b. The Chairman summarised the main aspects of this current Consultation on Modern Workplaces, which is due to close on 8<sup>th</sup> August. These mainly concern the so-called "family friendly" agenda, such as shared parental leave; the extension of the right to request flexible working to all, not just to parents and carers; and tidying up of the Working Time Regulations in the light of the Stringer decision;

There is also a proposal that Employment Tribunals should be required to order a respondent employer against which a finding has been made under the Equal Pay Act 1970 to conduct and publish the results of an Equal Pay audit, unless the Tribunal considered that it would not be productive to do so.

There was a discussion about whether these proposals have a sufficient relevance to the City of London to justify the Committee putting in a submission. The Employment Lawyers Association ("ELA") will do so. The Chairman would liaise with the Chairman of the ELA and consider this further.

3. David Hobart

Mr David Hobart, the recently appointed CEO of the City of London Law Society, was warmly welcomed. Mr Hobart briefly explained this background and the current issues facing The Society.

4. Recent cases on jurisdiction and choice of law

There was a discussion on the future direction of the law of contract, unfair dismissal and discrimination in the light of recent case law developments in the UK and Europe; and the abolition, in the Equality Act 2010, of the former statutory test of jurisdiction in discrimination cases, formerly applied in cases such as *British Airways v Mak* [2011] EWCA Civ 184.

The law is now unclear and in an unsatisfactory state. There is a school of thought that the unfair dismissal test in **Lawson v Serco** will now be applied in discrimination cases – but that may prove to be too simplistic, since the Equality Act implements various European Directives, including the Postal Workers Directive. Guidance from the UK Courts and ECJ is awaited. Meanwhile, the trend of Employment Tribunals indicating an increasing readiness to assume jurisdiction contrasts with the High Court's caution in doing so.

5. Termination of Contract – **Société Générale v Geys** [2011] EWCA Civ 307.

There was a wide ranging discussion of this case, which to a large extent was based on its own particular facts: - however, the Court of Appeal has deliberately left open the possibility of an Appeal to the Supreme Court on the issue of whether in the context of employment law a repudiatory breach of contract must be accepted before it brings the contract to an end.

6. Date of next meeting – 7<sup>th</sup> September 2011 at Mayer Brown.