

CITY OF LONDON LAW SOCIETY

EMPLOYMENT LAW COMMITTEE

**Minutes of a meeting held at Bird and Bird, 15 Fetter Lane
London EC4A 1JP on 13 June 2012**

1 Apologies

Anthony Fincham, John Evason and Alan Julyan, Mark Mansell and David Harper.

2 Minutes of last meeting

These were approved.

3 BIS Consultations

TUPE and collective consultation - There has been a call for evidence in relation to these issues. The Committee has resolved to wait for the wording to come out in relation to the proposed changes before considering the issue further.

Protected Conversations

It will be at the committee stage of the Enterprise and Regulatory Reform Bill that a clause will be inserted to deal with protected conversations and at this stage the Committee will look at the issue further. There is no indication currently as to when this is going to be.

There was a discussion about who volunteered to be on the sub-committee looking at protected conversations and it was confirmed that it will be Nick Robertson, Ian Hunter and Elaine Aarons.

There was a discussion as to what will be the nature of a protected conversation and whether it would need to include a dispute. The case of *Vernon* was mentioned where there was a letter to ACAS which went further than the pleaded case (it was criticising the Claimant). It was held to be a case of unambiguous impropriety and therefore the without prejudice rule was disapplied. It was agreed that *Vernon* is not consistent with the trend of narrowing the circumstances in which the without prejudice rule is disapplied. There was a discussion around the fact that there is often a gap where a without prejudice conversation has taken place which is inexplicable in the overall picture of a case and where it is obvious the parties have been in without prejudice discussions in any event. It was noted that it is important to define what exactly it is one can use in conversations. The rule works harshly on employees who can often volunteer a wish to compromise a claim. There was a discussion about whether legislation is needed at all and it was noted that any such new rule may be in breach of European law where discrimination is an issue.

4 Case Law

The *Seldon* decision was discussed and whether there will be changes as a result of this decision. It was generally agreed that there would not be a move away from default retirement ages. There was a discussion around studies to support evidence in age discrimination cases regarding the affect age has on people in the workplace.

Attrill and Halstead cases would be discussed on another occasion due to limitation of time.

5 AOB

Geoff Tyler has become General Counsel of Pinsents so he is going to step down. Gary Freer is now his partner at Pinsents.

The next meeting will therefore be at Pinsents as a "goodbye" to Geoff so Sian Keall will do the March 2013 meeting instead.

8 **Date of next meeting**

12 September 2012, Pinsent Masons.