

## CITY OF LONDON LAW SOCIETY

### EMPLOYMENT LAW COMMITTEE (the Committee)

Minutes of a meeting held at Pinsent Masons, 30 Crown Place, Earl Street

London EC2A 4ES on 12 September 2012

#### 1 Apologies

Mark Mansell, Elaine Aarons, Helga Breen, Laurence Rees, Michael Leftley, Ian Hunter and Sian Keall.

#### 2 Minutes of last meeting

These were approved.

#### 3 Matters Arising

There were none.

4 The Chairman told the Committee that it was Geoff Tyler's last attendance as a member of the Committee and on behalf of the Committee the Chairman thanked him for all his work and contributions over the years of his membership.

5 Robert Leeder of the City of London Law Society joined the Committee meeting. RL is responsible for coordination of policies and committees for the City of London Law Society and the purpose of his attendance at the Committee meeting was to let members of the Committee know what is going on generally with CLLS Committees. Robert explained that his job is to look at what is going on across the 19 committees. He explained that there had been 70 submissions all in all produced by the various committees of the CLLS during the year to date, ranging from intellectual property to finance matters. Also there is a new Corporate Crime and Corruption Committee so committees are still expanding. RL looks at policy areas and coordinates the various committees and ensures that one committee is leading a particular topic and supported by contributions from other committees. He is also responsible for the publishing of committees' work and has introduced an e-briefing system to show the responses of the various committees. RL explained that the CLLS has been busy in the media showcasing English law and what it does internationally and highlighting London as a dispute resolution centre. RL mentioned that the CLLS is also highlighting the need for better representation of lawyers on company boards.

RL also commented on the common European sales law proposal. The Commercial Committee is leading on this proposal which is looking at the introduction of a unified contract system and the Commercial Committee is opposed to it in its current form.

The Training Committee is looking at legal education and training. RL mentioned that the Chief Executive is heavily involved in the review. The review is a total review of legal training. There are questions around the need for change and questions about the need for regulatory intervention.

The Corporate Crime and Corruption Committee is looking at deferred prosecution agreements.

The CLLS are also looking at the implementation of the SRA's Outcomes Focused Regulation approach and its allowance of Alternative Business Structures etc and there has been lots of activity in this area in the last year (including a response submitted on authorised professional firms).

#### 6 BIS Consultations

Protected conversations - the Chairman commented that there is a rather confusing picture in relation to protected conversations at the moment. He noted that the Committee had intended to put in a submission but it has not at this stage. The proposal is, however, currently in the Enterprise and Regulatory Reform Bill. In its current form, the particular provision is solely triggered by the offer of settlement being made so it is much narrower than was originally envisaged. It wasn't clear whether there would be a broader consultation at this stage and the Committee would wait to see how matters develop.

Collective Issues - this is current but is limited to a call for evidence at the moment. There is a proposal from the government that it is going to be dealt with in a code of practice and statutory guidance. One of the issues being considered is whether to replace the 90 and 30 day periods with a 30 day period for all numbers of employees or even a two tier system of 30 and 45 days for consultation. The protected award would stay at 90 days though. The Committee was asked whether they thought the government should go for a 30 day single period or a two tier system. Members felt that a straightforward 30 day period would get rid of complications. It was noted that the Parent Directive for the legislation specifies 30 days and also it was noted that if longer consultation is needed it would still be required. It was agreed that members did not feel there should be two different periods, but they did not have strong views on whether it should be 45 or 30 days. Members also commented that they felt there should be some statutory code or guidance on the issue of what constitutes an establishment for collective redundancy purposes. They also considered that other issues need to be addressed such as the trigger point for consultation and consultation on closing businesses. One member commented that he had looked at this issue on behalf of the Employment Lawyers Association and they had concluded that employers should be able to exclude fixed term workers from the counting of numbers for collective redundancy purposes (it is possible in the Parent Directive to do this). It was felt that the government is "missing a trick" by not dealing with this. He also commented that it was felt by the ELA that there should be legislation or nothing rather than a code of practice. A code would not be clear or helpful. There was some discussion over the fixed term workers issue and a conclusion that whether fixed term workers are included in the numbers for collective redundancy purposes should depend on why their contract has come to an end.

## 7 Recent Cases

*Edinburgh Home Link Partnership and Others v The City of Edinburgh Council and Others* (TUPE)

The EAT has upheld a tribunal's decision that the directors of a housing charity providing services to a local authority did not transfer under TUPE when the service was taken "in-house".

Members felt that this decision was against all policy and agreed that the outcome was odd and may not be followed.

*Ranson v Customer Systems (Fiduciaries, solicitation)*

The Court of Appeal has allowed an appeal against the High Court's decision that a former employee breached a contractual duty of fidelity and a fiduciary duty to his employer. The Court of Appeal found that the employee did not owe a fiduciary duty and was not in breach of the duty of fidelity when he failed to tell his employer about his meetings with clients during his notice period at which he discussed his future business plans.

It was noted that there has been an application for leave to appeal but members were unsure whether it had been granted at this stage.

## 8 Any other business

There was no other business.