

**CITY OF LONDON LAW SOCIETY**

**EMPLOYMENT LAW COMMITTEE**

**Held at DAC Beachcrofts, 100 Fetter Lane, London EC4A 1BN  
on 11<sup>th</sup> September 2013 at 12.45p.m.**

In Attendance:

Gary Freer (Chairman)  
Elaine Aarons (Vice Chairman)

Bryan Cave  
Withers LLP

Elizabeth	Adams	DAC Beachcroft
Kate	Brearley	Stephenson Harwood
Helga	Breen	Lawrence Graham
William	Dawson	Farrer & Co
Helen	Derbyshire	Skadden Arps
Mark	Greenburgh	Wragge & Co
Ian	Hunter	Bird & Bird
Alan	Julyan	Speechly Bircham
Sian	Keall	Travers Smith
Michael	Leftley	Addleshaws
Laurence	Rees	Reed Smith
Anna	Rentoul	Simmons & Simmons

**Absent with apologies**

Paul Griffin (Secretary) Norton Rose Fulbright

Oliver	Brettle	White & Case
John	Evason	Baker & McKenzie
Jane	Mann	Fox Williams
Mark	Mansell	Allen & Overy
Nick	Robertson	Mayer Brown
Charles	Wynn-Evans	Dechert

**1 Apologies**

Apologies were received as noted above.

**2 Minutes of the last meeting**

These were approved subject to minor corrections.

**3 Matters arising from the Minutes of last meeting**

It was noted that the new Tribunal Rules of Procedure are now in place and the fees regime is now in operation. Their impact is not yet clear, although it is expected that statistics will confirm that there was a surge in the number of claims before the introduction of fees. It is understood that fewer appointments of new part time Employment Judges will now be made than was envisaged when the current recruitment exercise began.

**4 TUPE**

On 5 September the government published its response to the consultation on proposed changes to TUPE. These have turned out to be more limited than the government had previously proposed in the consultation paper issued in January 2013.

The most significant news is that it has been decided to retain the service provision change rules – which it had proposed to repeal.

It has been in effect decided, that retaining this "goldplating" of the Directive is necessary – or, perhaps more accurately, a better alternative than a return to the unsatisfactory uncertainty of the case law on service provision change under the Directive, such as Suzen.

It is proposed that the legislation will be amended to clarify that a service provision charge will only occur if the activities carried on after the alleged transfer are "fundamentally or essentially the same" as those carried on before it, in line with case law such as Metropolitan Resources Ltd v. Churchill Dulwich Ltd [2009] IRLR 700.

There is concern that the Government is about to miss an opportunity to clarify other points of legal and practical uncertainty as to the scope of a service provision change which had arisen from various cases discussed at previous meetings of the Committee.

## **5 Employee Shareholders**

This new legislation was now in place and some members reported that it was already generating requests for advice – not, as the government had primarily intended, from genuine start up businesses, but from Senior Executives in connection with venture capital transactions, often involving tax planning and very substantial sums. Difficult issues of valuation of shares may in due course result in disputes which will have to be decided by Employment Judges.

## **6 Report on CLLS Activities.**

We were pleased to welcome Robert Leeder who updated us on the various activities of other Committees, many of which had been active in responding to Government consultation papers and calls for evidence, and on developments of the Society's infrastructure for the support of the work of Committees, including a new Twitter account.

There was a discussion of the value of time spent by members of this and other Committees in preparing responses to government consultations. There was scepticism about whether these efforts could be said ever to have made a real difference, or whether the only practical way to influence events was through the rather different process of lobbying. It does however remain important to raise the profile with the profession of the work or proposal, done by the various Committees. This Committee can comment from the angle of the City of London and, increasingly, of the international businesses which many of our member firms have become.

## **7. The format and content of Committee Meetings**

There was a consensus that members still greatly appreciate the opportunity to gather and share experiences and ideas in a relaxed setting and that the present format works well in that context. Recognising the need to raise the Committee's profile in 2013 and beyond, it was agreed that it may be helpful to invite guest speakers to some meetings, particularly if we can attract some key decision makers and/or influencers of government policy.

## **8. Any other business**

There was not any other business.

Date of next meeting: 11<sup>th</sup> December at Allen & Overy