

CITY OF LONDON LAW SOCIETY

EMPLOYMENT LAW COMMITTEE

Held at Allen & Overy, 1 Bishops Square, London E1 6AD

On 11 December 2013

In attendance:

Gary Freer, Chairman	Bryan Cave
Paul Griffin, Secretary	Norton Rose Fullbright
Elizabeth Adams	DAC Beachcroft
Helga Breen	Lawrence Graham
Helena Derbyshire	Skadden Arps
Mark Greenburgh	Wragge & Co
Alan Julyan	Speechly Bircham
Sian Keall	Travers Smith
Oliver Brettle	White & Case
John Evason	Baker & McKenzie
Jane Mann	Fox Williams
Nick Robertson	Mayer Brown
Sarah Henchoz	Allen & Overy

Absent with apologies

Laurence Rees	Reed Smith
Charles Wynn-Evans	Dechert
Ian Hunter	Bird & Bird
Mark Mansell	Allen & Overy
Anthony Fincham	CMS Cameron McKenna LLP
Kate Brearley	Stephenson Harwood
Michael Leftley	Addleshaw Goddard
Anna Rentoul	Simmons & Simmons

1 Apologies

Apologies were received from the above.

2 Minutes of the Last Meeting

These were approved subject to the minor change that Anthony Fincham was in attendance at the September meeting.

- 3** There was a discussion about the impact of the new tribunal rules of procedure on the number of tribunal claims. It was agreed by all at the meeting that the number of new cases, since the new fee regime, has dropped significantly. It was also reported that claims are taking longer to get to employer respondents from the tribunal. Nobody had experience of the trial stage fee as yet and therefore Committee members were unable to report on its impact.

4 Case Discussion

J M Finn v Holliday – the Chairman led an interesting discussion in relation to the enforcement of garden leave which commentators and cases prior to this case had suggested would usually be enforced for a period of less than 12 months. The Chairman explained that what may not be apparent from the case report is that the employee was a very weak witness. The claimant employer successfully argued that a period of 12 months would be needed to cement

relationships with the clients and therefore the injunction should be extended beyond trial and for the full 12 months period of garden leave. The court agreed with this line of argument.

Croesus Financial Services v Bradshaw – the same Judge heard this dispute (Ingrid Simler) and followed similar principles in some respects.

Crystal Palace FC Limited v Kavanagh – Paul Griffin led a discussion in relation to this particular case and highlighted the inconsistencies in the outcome of the decision from the Employment Tribunal through to the Court of Appeal. There was a discussion around how difficult the position is for an Administrator and that virtually everything that an Administrator does could be seen as trying to maintain the business as a going concern which in turn could be seen as making it attractive for a potential purchaser in which case no ETO defence would be available. There was some discussion around whether the change to the new TUPE regulations (only requiring a transfer to be the reason for a dismissal as opposed to alternatively connected to use dismissal) would make any difference to the outcome of a case like Crystal Palace. It was held that the Administrator's reason in these circumstances was not the sale of the business then the case would turn on that. Some thought that the change would be unlikely to affect the outcome as the Administrator's actions/motives could often be said to be limited to the sale of the business.

5 **Any other business**

There was a lively discussion around current issues for members. Some reported they were doing a lot of work around financial regulation and especially the requirements of CRDIV. Others reported that they were involved in whistleblowing disputes and partner discrimination cases (including age discrimination). There was a further discussion regarding tribunals and the reluctance to make large awards of compensation in favour of high earning employees. Others were of the view that many schedules of loss are overdone and tribunals were becoming more likely to take a sceptical view of such practices.

Gary Freer, Paul Griffin, Charles Wynn-Evans and John Evason kindly agreed to host next year's meetings.

The Chairman informed the Committee that after a significant period undertaking the role, Paul Griffin has resigned as Secretary and that he would be looking for members who would be interested in this important role.