

## MINUTES OF MEETING

### CITY OF LONDON LAW SOCIETY

### EMPLOYMENT LAW COMMITTEE

Meeting held at Baker & McKenzie, 100 New Bridge Street, London EC4V 6JA  
12:45 pm on Wednesday 10 December, 2014

#### Attendees:

Gary Freer, Chairman	Bryan Cave
Helena Derbyshire, Secretary	Skadden, Arps
Elaine Aarons	Withers
John Evason	Baker & McKenzie
Anthony Fincham	CMS Cameron McKenna LLP
Mark Greenburgh	Wragge Lawrence Graham
Alan Julyan	Speechly Bircham
Sian Keall	Travers Smith
Michael Leftley	Addleshaw Goddard
Laurence Rees	Reed Smith
Anna Rentoul	Simmons & Simmons
Nick Robertson	Mayer Brown

#### Absent:

Kate Brearley	Stephenson Harwood
Helga Breen	DWF
Oliver Brettle	White & Case
William Dawson	Farrer
Paul Griffin	Norton Rose Fulbright
Ian Hunter	Bird & Bird
Jane Mann	Fox Williams
Mark Mansell	Allen & Overy
Charles Wynn-Evans	Dechert

1. Apologies were received from those listed as absent.
2. The Minutes of the last meeting were approved.
3. Case Discussion: Holiday Pay

The Committee discussed the recent *Lock v British Gas Trading Limited* and *Bear Scotland Limited and Others v Fulton* cases regarding holiday pay. Following the EAT's judgment in the *Bear Scotland* case and the ECJ's decision in *Lock* it is clear that holiday

pay derived from the Working Time Directive should reflect normal remuneration including commission and compulsory overtime (whether guaranteed or not guaranteed) and other elements of pay that are intrinsically linked to the employee's performance. The Committee discussed the implications of the decision and its impact on their clients. In particular there was a discussion about the look back period for claiming any shortfall in holiday pay. In *Bear Scotland* the EAT had suggested that any break between deductions from holiday pay of three months' or more would break the chain in a series of deductions.

The view was that most employers were waiting to see the outcome of further decisions in relation to paid holiday before making a commitment with regard to holiday pay unless their workforce was unionised. Anecdotally some of the unions, including Unite, had raised the issue as part of their annual pay round and sought lump sum payments of £500 per employee to settle any back claims. It appeared that public sector clients were wrapping this issue up in their current pay round.

The potential to claim holiday back pay was also an issue arising in the context of transactions.

In particular this was thought to be a tricky issue for the retail sector where overtime and commission often accrued over the Christmas period.

The Committee considered the appropriate look-back period and the general view was that it would be sensible to relate this to the overall normality of the contract (to even out spikes in commission and overtime).

There was then a brief discussion about a recent Australian decision concerning trust and confidence. The view in the New South Wales Court was that there was no such implied term in relation to employment contracts in Australia.

#### 4. Looking ahead – Forthcoming Cases, Political & Market Developments

The Committee then discussed the forthcoming shared parental leave. It was felt that generally clients were enhancing pay for shared parental leave in line with their current maternity arrangements.

A member of the Committee referred to a Linklaters survey which estimated that 65% of fathers would take shared parental leave although most were sceptical as to how quickly this would be taken up. It was likely to be something that needed time to bed in.

The Committee considered whether it would be appropriate to publish views on political and market developments to the extent that they impact on employment laws, for example, in the *City Solicitor Magazine*. However, there was a concern that expressing political opinions would place the members of the Committee in a difficult position with regard to their clients.

It was felt that unlike other City of London Law Society Committees, such as The Banking Law Committee, it was relatively difficult to find areas where there were City specific issues in relation to employment law. The Committee agreed that each member would consider before the next meeting the extent to which they could become more involved in assessing political and market developments (in a neutral way) on behalf of the CLLS.

5. Any other Business

The Chairman noted with regret that this would be the last meeting for Anna Rentoul, who was taking a career break and resigning from the Committee. She was thanked for her contribution.

The next meeting would be on 11 March 2015 and members of the Committee volunteered to host meetings over the coming year.