

MINUTES OF MEETING

CITY OF LONDON LAW SOCIETY

EMPLOYMENT LAW COMMITTEE

Meeting held at Skadden Arps, 40 Bank Street, Canary Wharf, London E14 5DS
12:45 pm on Wednesday 11 March, 2015

Attendees:

Gary Freer, Chairman	Bryan Cave
Helena Derbyshire, Secretary	Skadden, Arps
William Dawson	Farrer
Anthony Fincham	CMS Cameron McKenna LLP
Paul Griffin	Norton Rose Fullbright
Jane Mann	Fox Williams
Charles Wynn-Evans	Dechert

Observers:

David Hobart	City Solicitors
Gemma Watts	Project Associates

Absent:

Elaine Aarons	Withers
Kate Brearley	Stephenson Harwood
Helga Breen	DWF
Oliver Brettle	White & Case
Mark Greenburgh	Wragge Lawrence Graham
Ian Hunter	Bird & Bird
John Evason	Baker & McKenzie
Alan Julyan	Speechly Bircham
Sian Keall	Travers Smith
Michael Leftley	Addleshaw Goddard
Mark Mansell	Allen & Overy
Laurence Rees	Reed Smith
Nick Robertson	Mayer Brown

1. Apologies were received from those listed as absent.
2. The Minutes of the last meeting were approved.
3. Matters arising

- (a) Alan Julyan had notified Garry Freer that he would be retiring as a partner of Speechly Bircham with effect from 1 April 2015. It was agreed that there was no requirement that members of the Committee be partners in their firms if they remained in practice and Gary would let Alan know of this. In any event Gary would invite Alan to the next meeting in June.
- (b) Recruiting new members of the Committee: With Alan's retirement and Anna Rentoul's resignation at the last meeting the committee has a couple of vacancies. David Hobart would assist with the preparation of a notice to senior partners in member firms of the CLLS and an advertisement in the City Solicitor's Journal to seek applications to the committee.
- (c) Liaison with the CLLS:
 - (i) David Hobart updated the Committee on current projects including the role of the SRA and LSA; the separate business rule and discrepancy in Practising Certificate fees paid by City firms in relation to the regulated work that they undertake; the Global Law summit held in February at which public law issues were debated and attended by a number of General Counsel; the Lord Chief Justice's encouragement for solicitors to take up judicial appointments and how this might be facilitated; training and training contracts and how to encourage social mobility in the profession – for example whether the City firms would look to graduates in preference to candidates who qualify by equivalent means.
 - (ii) He introduced Gemma Watts from Project Associates, PR advisers to the CLLS and the Committee discussed its role with Gemma and David. He identified that many firms find it difficult to take a lobbying role in the light of their clients' interests, but that this was a function that the CLLS could perform in a neutral way. Forthcoming issues worthy of comment (aside from the general election) would be any EU Referendum and taxation (the distinction between avoidance and evasion).
 - (iii) It was agreed that the members of the Committee would consider before the next meeting how it can get involved in CLLS initiatives consistent with the interests of its members' clients. Post-election it might be easier to determine likely issues on the horizon.

4. Case discussion:

- (a) *Williams v Leeds United [2015] EWHC 376*– subsequently discovered misconduct in wrongful dismissal claim: this case was consistent with *Boston Deep Sea Fishing* (in that subsequently discovered misconduct could justify a dismissal). While the circumstances in this case were extreme the decision was based on a review of the employee's email after his resignation. This raised data protection issues: the Committee discussed whether data protection could be used to limit a deliberate attempt to discredit a resigning employee. The case has

additional significance in the light of current remuneration and claw back practices.

- (b) *Lodge v Dignity & Choice in Dying UKEAT/0252/14* – jurisdiction and remote workers: this case was noted as an example of expatriate employment within the scope of the ERA: although the employee worked remotely from Australia for family reasons (and had not been posted there by her employer) her employment was sufficiently connected with Great Britain.

5. Looking ahead – forthcoming cases, political and market developments

- (a) PRA/FCA Consultation Paper on Whistleblowing: The proposals in the consultation paper were felt not to be that ground-breaking (in that most regulated employers will have whistleblowing policies in place) but did raise the idea of a "whistle blower's champion". This could supplement the emphasis on individual accountability under the senior persons regime and should cover non-executive directors as well as employees. The view expressed was that the draft paper had been a knee jerk reaction to protect organisations from awkward employees rather than enabling the organisation to get to the bottom of the issues raised – the proposal overlooks the underlying issues.
- (b) Time Limits for claims and other issues under ACAS Conciliation regime: as a result of ambiguity in the applicable regulations, it is possible to extend the limitation period for a month from the date on which the ACAS conciliation issues the conciliation certificate, no matter how close the start of the consultation period or date of the certificate is to the end of what would otherwise be the limitation period.
- (c) Office of Tax Simplification: Employment Status Report: the OTS is proposing that tax status will be limited to "employed" or "self-employed" and that a statutory employment test should apply across the board to tax and employment rights. The proposals seemed broad brush on first reading and if the proposals are followed through after the election the Committee would approach the CLLS Tax Committee (Simon Yates at Travers Smith) to prepare a joint response to the proposals.

6. There was no further business. The next meeting is at 12.45 on 10 June at Addleshaw Goddard.