

MINUTES OF MEETING
CITY OF LONDON LAW SOCIETY
EMPLOYMENT LAW COMMITTEE

**Meeting held at CMS Cameron McKenna, Cannon Place, 78 Cannon Street, London
on 7 September 2016 at 12:45 pm**

Gary Freer, Chairman	Bryan Cave
Helena Derbyshire, Secretary	Skadden, Arps
Elaine Aarons	Withers
Kate Brearley	Stephenson Harwood
Oliver Brettle	White & Case
William Dawson	Farrer
Anthony Fincham (Host)	CMS Cameron McKenna LLP
Sian Keall	Travers Smith
Jane Mann	Fox Williams
Mark Mansell	Allen & Overy
Laurence Rees	Reed Smith
Nicholas Robertson	Mayer Brown
Charles Wynn-Evans	Dechert

Apologies:

Helga Breen	DWF
John Evason	Baker & McKenzie
Mark Greenburgh	Gowling WLG
Paul Griffin	Norton Rose Fulbright
Ian Hunter	Bird & Bird
Michael Leftley	Addleshaw Goddard

1. Apologies were received from those listed as absent.
2. The minutes of the last meeting were approved.
3. Matters arising
 - (a) Brexit

Members of the Committee have received many questions from clients regarding the impact of Brexit. It had appeared that the market had softened pre Brexit but transactions were back on for members of the Committee. A lot of clients were requiring advice for contingency planning. There were discussions as to whether the

members of the Committee thought that the City would continue to be an entry point for investment into Europe.

There was a discussion about scope for tax incentives as a result of the Brexit vote and a concern about contagion (the message to be sent to the rest of Europe). Members of the Committee discussed the legal challenge to Article 50 due to be heard in mid-October.

The members of the Committee also discussed whether or not employees could claim discrimination on the basis of religion or belief in relation to strongly held remain or Brexit views.

Although not strictly part of Brexit the Committee also discussed Theresa May's proposals for consultation about employee representation on Boards.

4. Taxation of Termination Payments

Comments on the consultation paper regarding taxation of termination payments were due by 5 October. The Committee noted that in accordance with the proposals the current £30,000 tax free exemption would not apply to earnings related to what would have been an employee's notice period.

The proposals relating to allowances from unfair dismissal compensation could be interpreted as requiring a finding from a court or tribunal, before a compensatory payment could be made without tax. This could mitigate against settlement. If this was the correct interpretation this would be a regrettable consequence.

A recognised medical condition would need to exist for an employee to receive compensation tax free for a personal injury claim. There was a feeling that the proposals lacked clarity.

The proposals could also have an impact on the off-set of a tax free amount against legal fees (particularly if part of the compensation relates to an employee's notice period).

5. Bank of England/PRA Consultation on Buy-Out of Variable Pay

The consultation period had expired in April. The Committee would discuss this again once further proposals had been made. There were practical difficulties in identifying a mechanism to claw back variable pay on the termination of employment and the willingness of successive employers to pass on performance information.

6. Revised GC 100 and Investor Group Guidance on Directors Remuneration

The Committee discussed these briefly. Issues were identified regarding the disclosure of severance packages.

7. Any other business

It was reported that the Employment Tribunals now have a consistent diet of longer discrimination cases. Following the introduction of tribunal fees there are fewer short cases are being heard.

The Committee discussed the possible introduction of a specialist employment court to replace Employment Tribunals and deal with employment related claims currently heard in the High Court. It was reported that the ELA's view was that this might gain traction. It was agreed that we would put this on our agenda for the next meeting.

In connection with this the Committee discussed preliminary findings in the *Asda* equal pay case in which the Employment Tribunal had held that a predominantly female group of supermarket employees could compare themselves with a predominantly male group of distribution depot employees for the purposes of an equal pay claim). The Court of Appeal had considered whether the Employment Appeal Tribunal had correctly upheld the Tribunal's decision to refuse a stay on the equal pay proceedings in order to effect a transfer of the claim to the High Court. The Court of Appeal upheld the previous decisions of the Employment Tribunal and EAT that a Tribunal has no power to stay equal pay proceedings indefinitely in order to require the Claimants to issue their claims in the High Court. The Court of Appeal rejected the employer's argument at the claims were complex and, accordingly the High Court was the more appropriate forum. The Employment Tribunal was capable of addressing the issues and an appropriate forum.

The next meeting would be at Fox Williams on 7 December 2016.