

**MINUTES OF MEETING**  
**CITY OF LONDON LAW SOCIETY**  
**EMPLOYMENT LAW COMMITTEE**

**Meeting held at Fox Williams LLP, 10 Finsbury Square, London EC2A 1AF  
on Wednesday 7 December 2016 at 12:45 pm**

**Present:**

Gary Freer, Chairman	Bryan Cave
Helena Derbyshire, Secretary	Skadden, Arps
Kate Brearley	Stephenson Harwood
Helga Breen	DWF
Oliver Brettle	White & Case
John Evason	Baker & McKenzie
Anthony Fincham	CMS Cameron McKenna LLP
Mark Greenburgh	Gowling WLG
Sian Keall	Travers Smith
Jane Mann	Fox Williams
Laurence Rees	Reed Smith
Nick Robertson	Mayer Brown
Charles Wynn-Evans	Dechert

**Apologies:**

Elaine Aarons	Withers
William Dawson	Farrer
Paul Griffin	Norton Rose Fulbright
Ian Hunter	Bird & Bird
Michael Leftley	Addleshaw Goddard
Mark Mansell	Allen & Overy

**In Attendance:**

Kevin Hart	CLLS
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1. Apologies were received from those listed as absent. The Chairman welcomed Kevin Hart to our meeting.
2. The Minutes of the last meeting were approved.
3. Matters arising
  - (a) News from the CLLS (Kevin)

Brexit: various Committees have outlined key issues that are of concern in the immediate aftermath of the Brexit vote. The CLLS will ask for further input from its Committees at key times. The Employment Committee should look out for issues that are affecting other Sub-Committees and be aware of areas of the law where we could link into their proposals.

New Chair: Ed Sparrow of Ashurst has been appointed the new Chair of CLLS. He hopes to meet each of its Committees next year.

Financial Law Committee: have been commenting on a range of changes.

Land Law Committee: have been active regarding changes to Certificates of Title and producing precedent documents, which have generated much interest around the country.

31 January 2017: Committee members were encouraged to attend the Annual Court, Committees and Livery Dinner on this date.

Ministry of Justice: The Chairman commented that the Ministry of Justice had been seeking volunteers and Michael Leftley of the Committee had volunteered to represent the Committee. Kevin Hart noted that members put forward by other Committees have been approached by the Ministry of Justice.

(b) Specialist Employment Court

The ELA had produced a thorough and well written paper in April responding to the proposals in the Briggs Report. The Chairman summarised ELA's view. The proposal would cover the Employment Tribunal System and High Court work regarding employees (to include injunctions with regard to (a) restraint of trade (b) industrial relations). The proposal was that the Employment Court would have different tiers, with judges to hear cases that would previously have been allocated in the High Court.

ELA had proposed an alternative three tier system.

The first tier would cover summary determinations and would be undertaken online. This would be a preliminary sift.

The second tier would cover tribunal rules of procedure and claims within the Employment Tribunals' jurisdiction (plus discrimination in relation to goods and services). It was suggested that the financial cap on breach of contract claims should be lifted.

The third tier would cover injunctive relief. There was a concern regarding the availability of suitable judges to hear injunction claims within an Employment Tribunal context.

The EAT would become the Employment and Equalities Court and would also hear High Court claims at the first instance. There would be a right of appeal as now. The EAT would be more clearly a division of the High Court.

The Committee considered issues concerning the approach to costs (noting that the Tribunal system currently differs significantly from the High Court), and where industrial relations cases (which could be seen as political) would most appropriately be heard.

There was a further Ministry of Justice paper in the preceding week regarding reforms to the Tribunal system and suggesting that this should be more IT based to bring it in to line with the High Court system. A consultation regarding the rules for Tribunals generally was proposed, but a separate Tribunal with an employment judge would be retained. There was no longer a suggestion of a single employment court/joint forums. This will require consultation and the Committee will have an opportunity to comment.

(c) Corporate Governance Green Paper (employee voice, pay ratios)

Responses to this Green Paper are due by 17 February. The Government had written back on Theresa May's initial proposals to grant greater employee voice and was looking at voluntary reporting of pay ratios.

There was also a discussion of Gender Pay Gap reporting and it was noted that the Government Equalities office had adopted the Committee's proposal to include share awards at the point of ITEPA taxation.

The Committee noted that the draft provisions are using the Equality Act definition of "employment" as we had discussed with the members of the GOE.

(d) Taylor Review of Modern Working Practices.

The Committee discussed the Taylor Review, and its apparent view that job security would lead to productivity. The real issue was employment status. The Committee discussed the fact that flexible working patterns enabled people to stay in work, but were potentially inconsistent with the sixteen hour threshold for families to qualify for Working Families Tax Credits.

The review had been vague so far. There had been a tour of the country to take evidence as to general working practices and, accordingly, the review looked practical.

The Taylor Review would need to tie in to the Parliamentary Committee also looking at workers status.

There was a further link to tax/revenue. The thought was if flexible working is recognised and enabled that will reduce the risk of a black economy.

The Committee agreed that it would be appropriate to clarify the rights and benefits attaching to a "worker" status. There remains a role for non-unionised a typical workers and there would be disadvantages in making employment structures too rigid for fear of losing jobs. The Chairman had a contact involved in the Taylor Review (Diane Nicol at McGregor's/Pinsent Mason). He would invite her to our next meeting.

(e) Taxation of Termination Payments.

We would carry this over to the next meeting. There was a concern that the current proposal was likely to increase the cost of severance payments as employers would be encouraged to round these up to match existing entitlements.

4. Any other business

We discussed the Gender Pay Gap Reporting Regulations and client action planning/it would be useful to discuss our client's proposals for actions to close the gap.

The next meeting will be at Travers Smith on 1 March 2017 at 12.45 pm.