

MINUTES OF MEETING

CITY OF LONDON LAW SOCIETY

EMPLOYMENT LAW COMMITTEE

Meeting held at Baker & McKenzie, 100 New Bridge St, London EC4V 6JA
on Wednesday 7 June 2017 at 12:45 pm

Present:

Gary Freer, Chairman	Bryan Cave
Elaine Aarons, Vice Chair	Withers
Helena Derbyshire, Secretary	Skadden, Arps
Kate Brearley	Stephenson Harwood
Helga Breen	DWF
John Evason	Baker & McKenzie
Anthony Fincham	CMS Cameron McKenna LLP
Kevin Hart	CLLS
Sian Keall	Travers Smith
Michael Leftley	Addleshaw Goddard
Jane Mann	Fox Williams
Mark Mansell	Allen & Overy
Nick Robertson	Mayer Brown
Charles Wynn-Evans	Dechert

Apologies:

Oliver Brettle	White & Case
William Dawson	Farrer
Mark Greenburgh	Gowling WLG
Paul Griffin	Norton Rose Fulbright
Ian Hunter	Bird & Bird
Laurence Rees	Reed Smith

1. Apologies were received from those noted as absent.
2. The Minutes of the last meeting were approved with a correction to the report on the Marathon Asset Management case.
3. Matters arising

Elaine Aarons, who had been involved in the Marathon Asset Management case gave some more colour on the background to that case concerning Wrotham Park damages. It was noted that there were many cases where employees take confidential information that has not been used. In the Marathon case the employer had wanted to make a point and although no damages were awarded the employee was required to

pay costs to settle the case. The case was seen as reversing the tide in the award of Wrotham Park damages.

4. The Taylor Review

Diane Nicol was unable to attend the meeting as originally planned in the light of the upcoming general election. Gary Freer and Gavin Mansfield QC (as chair of the Bar's employment law committee) had a telephone discussion with Diane Nicol and Matthew Taylor. That had been the day that the election had been announced so they had been unable to comment on the status of the Review. It was, however, later included in the Conservative manifesto.

They had been able to discuss the terms of reference and the scope of the review. The Taylor Review had been told that they could not talk about tax (that would be within the Treasury's remit) which rather hindered the review given the extent to which a worker's behaviour and employment status is affected by his or her tax status: the picture would be incomplete if tax was not considered in conjunction with the review of workers status. It was felt that the general direction of travel was to iron out the differences between different groups of workers both from an employment rights and a tax/national insurance point of view.

We should consider coordinating any further submissions with the CLLS Revenue Law Committee. If the fiscal advantage of not being an employee was removed then their worker status/non-employee may become less attractive.

From the City's perspective there was a general issue around LLP's and the status of members who do not really have a say in the management of the LLP in the same way as traditional equity partners (this is an issue, for example, in relation to hedge funds). There were tax changes proposed to address this but nothing in relation to employment rights.

The review was really focusing on legislation to protect oppressed or hidden workers (e.g. in the catering, security and cleaning industries) but it was not realistic to assume that one size fits all. This is not a realistic approach in relation to, for example, IT consultants or LLP members who are in a stronger position to negotiate their terms.

There was a discussion about the fact that the existing protections for workers should be adequate but the tools and ability to enforce those rights were not.

It was also thought there could be a risk of a backlash in relation to "gig" employers who could return to a default position of exercising more control over workers in return for the employment rights that they are claiming. May gig workers would still want the flexible status.

5. Engagement

It was proposed that the Committee should prepare for the meeting with Diane Nicol ready to raise issues in relation to the City's interest in the Taylor Review and understand the current direction of travel. There was also a distinction between high level issues which could be more political and granular issues (for example aligning definitions with legislation as we had in our discussions with the GEO) and that the

Committee's role as lawyers could be to look at the detail of any resulting legislation. It was agreed that the Committee would identify some bullet point issues to address with Diane including where the outcome of the Taylor Review might put the UK in relation to other European Union or other jurisdictions. We should identify where we could add value and aim to spot any unintended consequences.

6. Any other business

It was noted that the CLLS as a whole has become a more active voice (for example briefing the SFO) and an exchange of ideas was encouraged. A number of committees have been generating papers. The committee was encouraged to show the work that it has been doing and how it is influencing policy.

The Chair would prepare a note for the City Solicitor Magazine on the Committee's work. We also considered whether it would be appropriate to agree a note of any discussions with bodies that we do meet with.

7. We thanked John Evason for hosting the meeting at Baker & McKenzie. The next meeting would be on Wednesday 6 September at White & Case.