

MINUTES OF MEETING
CITY OF LONDON LAW SOCIETY
EMPLOYMENT LAW COMMITTEE

**Meeting held at White & Case, 5 Old Broad St, London EC2N 1DW on Wednesday 6
September 2017 at 12:45 pm**

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| Gary Freer, Chairman | Bryan Cave |
| Helena Derbyshire, Secretary | Skadden, Arps |
| Elaine Aarons | Withers |
| Kate Brearley | Stephenson Harwood |
| Helga Breen (by phone) | DWF |
| Oliver Brettle (Host) | White & Case |
| William Dawson | Farrer |
| Paul Griffin | Norton Rose Fulbright |
| Anthony Fincham | CMS Cameron McKenna LLP |
| Sian Keall | Travers Smith |
| Michael Leftley | Addleshaw Goddard |
| Jane Mann | Fox Williams |
| Mark Mansell | Allen & Overy |
| Laurence Rees | Reed Smith |
| Nick Robertson | Mayer Brown |
| Charles Wynn-Evans | Dechert |
| Diane Nicol (Guest) | Pinsent Mason |
| Kevin Hart | CLLS |

Apologies

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| John Evason | Baker & McKenzie |
| Mark Greenburgh | Gowling WLG |
| Ian Hunter | Bird & Bird |

1. Apologies were received from those noted as absent.
2. The minutes of the last meeting were approved.
3. With regret the Chairman noted that Ian Hunter had stood down from the committee and that this would be Laurence Rees' last committee meeting. He gave thanks to both for their contribution to the committee and noted Laurence's significant contribution as a founding member.

4. Matters arising

There were no matters arising.

5. Taylor Review

The Chairman welcomed Diane Nicol who had been a co-author of the Taylor Review and adviser to the Taylor Review panel (the "Review Committee").

Diane is a partner at Pinsent Masons and explained the background to the Taylor Review. The Review Committee had been established following government concerns about potential exploitation in the workplace, particularly in the light of new business models.

The Review Committee had comprised Diane Nicol, Matthew Taylor, Paul Broadbent and Greg Marsh. Their backgrounds were diverse and each had taken an in-depth involvement.

There was no particular blueprint for the Review Committee but they determined their own approach which included talking to workers and businesses on the ground outside London. Diane in particular engaged with lawyers, the trade unions and advisory groups. Matthew Taylor had engaged directly with industry and was the conduit for the Committee to Number 10.

Diane noted that the UK had the highest employment rates ever but an increase in low paid workers. Key issues addressed included the skills gap, productivity gap and employment relationships. There was a desire for consistency and to redress the imbalance between (a) flexibility and choice and (b) protecting individual workers.

The Review Committee had tended to see good employment practices in large PLC's but there was a greater lack of engagement in SME's or large companies.

One conclusion was that the root of poor productivity was the lack of employee/worker engagement. Low paid employees feel they have no influence. This was something the Review Committee wanted to address.

The intention is that there will be consultation about any proposals coming out of the review (similar to the gender pay gap review). Diane explained that the Review Committee was due to feed back to a parliamentary select committee the following Wednesday and there had been a lot of lobbying behind the scenes. Diane was confident that there had been a lot of movement on engagement.

Diane's personal view was also that going forward the different stakeholders in the Review would be more open to aligning employment status to tax. She noted that tax had been a significant motivator for the Review (even though this was not officially the line). HMRC were very involved in each of the meetings and had no objection to the final conclusions in the Review.

In terms of employee engagement, the Review Committee had looked at information and consultation rights with a view to creating a better vehicle for consultation and engagement.

There was a discussion about engagement with atypical workers. For example, at Uber, drivers use online chatrooms which could form the platform for an engaged consultation body.

The Review had also looked at the model used by Dutch care workers who communicate through employer or organisation-wide blogs to which workers are able to respond.

The Review Committee had been mindful that the distinction between workers, employees and self-employed workers should not be too binary to avoid a black economy.

The Review had not included a codification of the employee status test as that would have taken too long and was too granular for this particular body but was something that would need to be looked at.

An element of persuasion would be required as to how to codify the different types of worker, namely dependent contractors and other workers. The Review Committee had recommended an online service to help employers to identify the status of staff. The idea is that there should be a more equal relationship between different categories of workers but that it should be possible to determine status within identifiable categories.

There was some discussion about enforcement models for workers' rights overseas, (for example Australia where workers can seek redress through an ombudsman). Diane did say there had been some thought about introducing an alternative way to enforce certain workers' rights (for national minimum wage for example), without the need for employers or workers to go to the employment tribunal [for which, at the time of the meeting, the worker would be required to pay a fee.]

There was a discussion of the comply or explain type approach. For example employers could be asked to report on the make up of their workforce (similar to the gender pay gap reporting requirements).

Diane made it clear that the Committee could influence the Review through participating in consultation. Key areas included employee engagement/consultation rights with a view to ensuring employee engagement rather than imposing models on organisations and their workers.

The Chairman thanked Diane for her time. The Committee would take a close interest in any draft legislation and further consultation papers.

6. Any other business

There was no further business.

The Chair thanked Oliver Brett for hosting the meeting. The next meeting would be at Gowling WLG on Wednesday 6 December 2017.