

MINUTES OF MEETING
CITY OF LONDON LAW SOCIETY
EMPLOYMENT LAW COMMITTEE

Video conference
Wednesday 8 September 2021
at 12.45 pm

In attendance:

Helena Derbyshire, Chair	Skadden, Arps
Damian Babic, Minutes	Skadden, Arps
Paul Griffin	Norton Rose
Mark Greenburgh	Greenburgh & Co
Nick Robertson	Keystone
Chinwe Odimba-Chapman	Clifford Chance
Kate Brearley	Stephenson Harwood
Colin Leckey	Lewis Silkin

Apologies:

Charles Wynn-Evans	Dechert
Elaine Aarons	Withers
Oliver Brettle	White and Case
Rebecca Harding-Hill	BCLP
Jane Mann	Fox Williams
John Evason	Baker & McKenzie
Sian Keall	Travers Smith
Michael Leftley	Addleshaw Goddard
Kevin Hart	CLLS

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

The Chair noted that Oliver Brettle would be retiring from the committee and thanked him for his work on the committee.

The Chair noted that new appointments to the committee would be considered this autumn.

The Chair proposed that Damian Babic be appointed as the Secretary of the committee. The Committee confirmed his appointment.

4. Discussion of issues on the City's return to work

The committee agreed that generally US headquartered employers were more readily requiring vaccinations as a condition for a return to the office than UK employers.

A member of the committee has seen one employer seeking to renegotiate terms and conditions with employees to reduce pay for employees who work from home. The committee agreed that this was likely to become more of an issue with pay differentials emerging between employees working remotely and those in the office. The committee had generally experienced clients considering these issues, including pressures on regional employers with employees seeking moves to London for higher paid jobs that require less time in the office.

The committee considered the issue of employees refusing to return to work and agreed that a large number of employers were experiencing issues with difficult employees, albeit on an individual basis. A member said that ultimately that this would be determined by the market and the competition for talent in certain sectors and the extent to which employees can demand to work remotely.

A member considered the issues presented by hybrid models of working, with junior staff encouraged to be in the office for training and mentoring purposes and senior staff having more flexible working patterns. The committee agreed that this presented issues and could have an impact on pay for those working remotely and those working in the office.

It was noted that many employers have not been able to get comfortable from a permanent establishment and regulatory perspective with employees working abroad for long periods of time.

5. ICO Call for Views on Employment Practices

The Chair asked for volunteers for a working group to respond to the ICO paper and noted that the responses were due by 21 October. The Chair confirmed she would email the wider group for volunteers to work on a response.

6. Cases

The committee considered two cases (*Accattatis v Fortuna Group (London) Limited* and *Montanaro v Lansafe Limited*). The Chair noted that these two ET decisions around automatically unfair dismissals if employees take steps to protect themselves or others where they have a reasonable belief of serious and imminent danger could give employees potential arguments around continued remote working in the context of covid-19.

A member of the committee was surprised about the decision in *Accattatis* because the offer to fail to pay the employee if they were not at work was not really fair treatment in the circumstances, particularly in the context of the Covid-19 health and safety risk.

The committee also considered the EAT's decision in *Abbeyfield (Maidenhead) Society v Hart (UKEAT/0016/21)* and the finding that an email indicating intention to dismiss that was sent prior to a disciplinary hearing was covered by litigation

privilege/did not fall within the iniquity exception. NR felt that the decision was pretty close run and the committee agreed that on the facts of the case the email fell more squarely into legal advice privilege than litigation privilege.

7. Any other business

COC raised two recent FCA/regulatory consultation papers and one particularly on listed companies. The Chair would check if the Company Law committee was looking at these consultation papers to see if this committee could contribute to that work.

The Chair confirmed that the next meeting would be in the first week of December 2021, with a decision on whether the meeting would be in person to be made at the time.