CITY OF LONDON LAW SOCIETY

EMPLOYMENT LAW COMMITTEE

Minutes of a meeting held at Reed Smith, 20 Primrose Street, London, EC2A 2RS on 14 March 2012

In attendance:

Gary Freer (Chairman)	McGrigors
Elaine Aarons (Vice Chairman)	Withers
Elizabeth Adams	Beechcrofts
William Dawson	Farrer & Co
Anthony Fincham	CMS Cameron McKenna
David Harper	Hogan Lovells
Alan Julyan	Speechly Bircham
Jane Mann	Fox Williams
Mark Mansell	Allen & Overy
Nicholas Robertson	Mayer Brown
Laurence Rees	Reed Smith

Absent with apologies:

Paul Griffin (Secretary)	Norton Rose
Kate Brearley	Stephenson Harwood
Helga Breen	Lawrence Graham
Oliver Brettle	White & Case
John Evason	Baker & McKenzie
Ian Hunter	Bird & Bird
Sian Keall	Travers Smith
Michael Leftley	Addleshaw Goddard
Geoff Tyler	Pinsent Masons
Charles Wynn-Evans	Dechert

1. MINUTES OF LAST MEETING

These were approved.

2. MATTERS ARISING

There were no matters arising.

3. BIS – CONSULTATIONS

The Chairman reported that it had been decided that the Committee would not respond to the "Calls for Evidence" on reform of the law on Collective Consultation and the TUPE Regulations – but will respond when firm proposals are issued for consultation later in the year.

4. RECENT CASES

(a) Team Moves, Injunctions and Covenants

QBE Insurance v Dymoke

On the facts as found by the Trial Judge, there was a long list of the unlawful acts committed by a departing team and their new employer.

Points of general interest are the doubt cast by Haddon-Cove J on the remarks made by Hickinbotham J in Lonmar Global Risks v West, to the effect that employees (who are not fiduciaries) have no duty to disclose their knowledge of colleagues' plans to leave; and the granting of a 12 month final springboard injunction.

Caterpillar Logistics v Huesca De Crean

It was noted that the Court of Appeal rejected an employer's attempt to extend Bolkiah principles into the employment arena. It was also of interest to note the Court's trenchant criticism of what it considered to be an excessively aggressive approach to the dispute by the Claimant, including a failure to explore an amicable solution before engaging in aggressive correspondence and litigation.

Towry EJ v Bennett

This case was unusual in that an employer was attempting to enforce a covenant against solicitation of clients in the absence of a non-dealing covenant. Of general interest was Mrs Justice Cox's analysis of the meaning of "solicitation" - an element of attempted persuasion is required, whether or not the covenantor has initiated contact with the client or vice versa. An attempt by the Claimant to establish that solicitation had occurred using a "top down" approach - i.e. so many clients had transferred their business that it should be inferred that solicitation must have occurred - was rejected in favour of a "bottom up" approach. Evidence given by the clients themselves had been very important.

(b) TUPE

Eddie Stobart Limited v Moreman & Others

The EAT had given important guidance of the meaning of an "organised grouping of employees"; for the purposes of determining whether there had been a service provision change to which TUPE would apply. The employer in this case had spent the majority of their time working for a particular client, but had been organised in this way because of the way their employer organised its shift patterns (rather than as a team where the principle purpose was to carry out work for that client) - and this was not sufficient. The Court also emphasised that whether this was an "organised grouping of employees" and, if so, whether the employees in question were assigned to that grouping were distinct issues which had to be considered separately.

It was agreed that this and other recent decisions appear to allow employers for some scope for TUPE avoidance.

5. DATE OF NEXT MEETING

13 June 2012 at Bird & Bird.