CITY OF LONDON LAW SOCIETY

EMPLOYMENT LAW COMMITTEE

MINUTES OF MEETING HELD AT THE OFFICES OF MAYER BROWN INTERNATIONAL, 11 PILGRIM STREET, LONDON EC4V 6RW

On Wednesday 11th June 2008 at 12.45pm

In Attendance:

Raymond Jeffers (Chairman)	Linklaters
Gary Freer (Secretary)	McGrigors
Catherine Brearley	Stephenson Harwood
Oliver Brettle	White & Case
William Dawson	Farrers
David Harper	Lovells
Ian Hunter	Bird & Bird
Alan Julyan	Speechly Bircham
Laurence Rees	Reed Smith
Julian Roskill	Mayer Brown International
Geoffrey Tyler	Pinsent Masons

Absent with apologies:

Elaine Aarons (Vice Chairman)	Withers
Elizabeth Adams	Beachcrofts
Helga Breen	Lawrence Graham
John Farr	Herbert Smith
Anthony Fincham	CMS Cameron McKenna
Paul Griffin	Norton Rose
Jane Mann	Fox Williams
Mark Mansell	Allen & Overy
Charles Wynn-Evans	Dechert

1 **Apologies for absence**

Those were received as noted above.

2 **Minutes of Meeting and Matters Arising**

These were approved subject to minor corrections. There were no matters arising.

3 **The Government's response to the Gibbons Report**

Most of this had already been reflected in the contents of the Employment Bill and it contained few surprises. The proposals to extend the category of cases in which Employment Judges can sit alone were welcome, as were the provisions to provide

additional resources to ACAS and to remove limitations on their power to conciliate. The decision not to require early service of a Schedule of Loss is regrettable but not a surprise.

4 **The ACAS Draft Code on Grievance and Disciplinary Procedures**

Since non-compliance carries a risk of an uplift of awards of up to 25%, this will be of considerable significance.

There were some points which require clarification, notably in relation to whether redundancy dismissals and the expiry/non-renewal of fixed term contracts are within its scope at all.

The target date for it to come into force is April 2009. Raymond Jeffers will review whether, in the light of submissions to be made by the ELA, a separate City-focused submission is called for.

5 **Swann v GHL Insurance Services**

This was a recent Employment Tribunal decision about how age discrimination legislation will be applied to flexible benefits provided by insurers.

The Employer paid the same premium in respect of each employee – but the scope of cover provided by the insurer in return varied according to age.

The Employer's justification case was accepted – its evidence that it had consulted its staff in advance by written survey helped to persuade the Tribunal that it was pursuing a legitimate aim; and the fact that it had taken expert professional advice assisted in demonstrating that the means adopted were proportionate.

The decision may indicate that in age discrimination cases Tribunals may be more prepared to accept employers' arguments based on cost factors than in other types of discrimination claim.

6 **Collidge v Freeport [2007] EWHC 1216 (QB)**

In this case, in which the merits were strongly in favour of the employer, an employee was found to be in breach of a warranty contained in a Compromise Agreement to the effect that there were no circumstances of which he was or ought to be aware which would constitute a repudiatory breach. It was held at first instance that in these circumstances the employer was entitled not to pay the compensation agreed in the Agreement, and this was upheld in a robust judgment by the Court of Appeal.

The wording of precedent Compromise Agreements will no doubt be reviewed in the light of the detailed judgment.

7 **SG&R Valuation Services v Bourdais [2008] ALLER (D) 141**

This decision illustrates that even in the absence of an express clause in which an employer rescues the right to place an employee on garden leave for the notice period, an Order may sometimes be granted by the Court which will have the same effect.

On the facts of the case it had been established that the employees had behaved in a way which demonstrated that they were not ready or willing to work.

8 **Any Other Business**

Geoffrey Tyler reported on recent and proposed developments in the administration of the Tribunal Service as a whole.

Attention was drawn to recent TUPE issues.

Draft Guidance to the new Immigration Rules requires verification of immigration status within 28 days of a change of employer even when TUPE applies. Penalties are severe. Clients should be advised to check the position.

There was some concern about the practical implications of the judgment of the E.A.T. in Perrys v Lindley, UKEAT/0616/07/DA.

It was held that where, in connection with a transfer, the transferee directs the transferor to dismiss an employee by reason of the fact that she had previously brought proceedings against the transferee, the employee was victimised and automatically unfairly dismissed pursuant to section 104 of the Employment Rights Act and had a claim against the transferee – despite the fact that at the date of dismissal she did not have one year's continuous service with the transferor.

It was doubted whether this decision is correct in principle.

9 **Date of next Meeting**

10th September 2009 at CMS Cameron McKenna.