

**CITY OF LONDON LAW SOCIETY**

**EMPLOYMENT LAW COMMITTEE**

**MINUTES OF MEETING HELD AT BEACHCROFTS  
100 FETTER LANE  
LONDON EC4 1BN**

**on 18<sup>th</sup> March 2009 at 12:45 p.m.**

In attendance:

Raymond Jeffers (Chairman)	Linklaters
Elaine Aarons (Vice Chairman)	Withers
Gary Freer (Secretary)	McGrigors LLP
Elizabeth Adams	Beachcrofts
Catherine Brearley	Stephenson Harwood
Helga Breen	Lawrence Graham
Oliver Brettle	White & Case
William Dawson	Farrer & Co
John Farr	Herbert Smith
Anthony Fincham	CMS Cameron McKenna
Alan Julyan	Speechly Bircham
Mark Mansell	Allen & Overy
David Harper	Lovells

Absent with apologies

Paul Griffin	Norton Rose
Ian Hunter	Bird & Bird
Jane Mann	Fox Williams
Laurence Rees	Reed Smith
Geoffrey Tyler	Pinsent Masons
Charles Wynne-Evans	Dechert

On behalf of the entire Committee, Raymond Jeffers thanked John Farr for his many contributions to the Committee, on his appointment as Consultant to Herbert Smith, and offered its best wishes for the future.

**1 Apologies**

Apologies were received as noted above.

**2 Minutes of Previous Meeting and Matters Arising**

These were approved. There were no matters arising.

**3 Officers**

Raymond Jeffers announced that he wished to relinquish the Chairmanship of the Committee. The meeting on June 10<sup>th</sup> would be his last as Chairman and we should aim to have a new Chairman in place by September.

Any member interested in becoming Chairman should let Raymond know. He would then consult with a view to coming to the June meeting with a recommendation.

#### 4 **New Members**

Following the recent or imminent departures of Julian Roskill, John Farr and Raymond Jeffers the membership of the Committee will fall below the ideal number of 20. New members are needed.

Some of those who have stepped down recently have suggested that we might wish to invite partners from their firms to fill the vacancy, but it is important to maintain the principle that appointments are personal. It is, however, not inconsistent with that principle that prospective members should be encouraged to put their names forward.

Raymond Jeffers would invite applications in the usual way in the CLLS Newsletter and report to the next meeting on responses received.

#### 5 **The FSA Code of Practice on remuneration policies**

There was a discussion of whether the Committee should respond to the Consultation document issued by the FSA, given that the Code is concerned both with policies and principles and practical implementation issues; and that any principles may be influential outside the FSA regulated sector.

The consensus was that this was not a suitable document for a Committee submission.

#### 6 **"Clawback" of bonus**

There was a long discussion of this topical subject – the legal route to workable solutions may be elusive.

Clauses designed to deter – such as a claim by which bonus is forfeit if the recipient joins a competitor – may be vulnerable to the doctrines of penalties and restraint of trade, and there may be difficulties in drafting for global businesses a clause which will be legally enforceable around the world.

#### 7 **Extraterritorial effect of UK Employment law**

There was a discussion of the extent to which the law is now relatively settled in the aftermath of the House of Lord's decision in *Lawson v Serco* [2006] I.C.R. 250.

One decision which appears problematical was that of the Employment Appeal Tribunal in *Bleuse MBT Transport* [2008] IRLR 264. This was a claim brought for outstanding holiday pay under the Working Time Regulations 1998 in the UK Employment Tribunal. A panel chaired by Mr Justice Elias held that since the Regulations implement an EU Directive, the parties' choice of the UK as the proper law of the employment contract – albeit in a contract between an overseas national and an overseas company which was performed entirely within the EU but outside the UK – had the effect that they had contracted in to a mandatory legislative provision.

Date of next meeting: 10<sup>th</sup> June at White & Case.