CITY OF LONDON LAW SOCIETY

EMPLOYMENT LAW SUB COMMITTEE (the Committee)

Minutes of a meeting held at Travers Smith, 10 Snow Hill, London, EC1A 2AL

on 13 March 2013

In Attendance:

Paul Griffin	Norton Rose
Ian Hunter	Bird & Bird
Anthony Fincham	Cameron McKenna
Gary Freer	Pinsent Masons
Elaine Aarons	Withers LLP
Kate Brearley	Stephenson Harwood
John Evason	Baker & McKenzie
Jane Mann	Fox Williams
Sian Keall	Travers Smith
Laurence Rees	Reed Smith

1 **Apologies**

Apologies were received from William Dawson, Helga Breen, Michael Leftley, Charles Wynn-Evans, Elizabeth Adams, Alan Julyan, Oliver Brettle, David Harper, Nick Robertston and Mark Mansell.

In addition to his apologies, David Harper gave notification by email of his resignation from the Committee with immediate effect following his retirement from the partnership at Hogan Lovells. The Committee felt that it would be appropriate to invite David back for a farewell committee meeting as he was one of the "founding fathers" of the Committee.

2 **Minutes of the last meeting**

These were approved.

3 **Matters arising from the minutes**

None.

Robert Leeder and David Hobart

4 Robert Leeder and David Hobart joined from the City of London Law Society. David explained to the Committee what the current big issues are for the CLLS. He explained that one of the core issues at the moment is regulatory balance. He said there are 17 specialist committees and all feel they are over burdened with regulatory dialogue at the moment. David also mentioned that there is some enthusiasm from the SRA to regulate the international practices of UK law firms. The position of the CLLS is that these firms should be regulated by their host jurisdiction authorities. David said that the CLLS is doing what it can to impress on Government that lawyers are actually responsible for economic growth in part and also assist their clients' businesses to flourish.

There was some discussion amongst the Committee members about regulation affecting solicitors' practices and a question was asked as to whether anything was being done about this. David Hobart responded that, touching on this issue, there were some discussions taking place in relation to the issue of whistleblowers and the appropriate structure for disclosures being

made by lawyers regarding regulatory breaches.

5 The chairman explained that there were three vacancies and three applicants for places on the Committee.

1. Mark Greenburgh from Wragge & Co

2. Helena Derbyshire from Skadden Arps

3. Anna Rentoul from Simmons & Simmons

The Committee agreed that all three candidates should be appointed.

6 The Chairman suggested that as there was not much response to setting up a sub-committee to deal with the Government's TUPE consultation, and that a better way of dealing with the Committee's response to the Government's request would be for the various Committee member firms' responses to be reviewed and a summary acceptable to the Committee be submitted as the CLLS Employment Law Sub Committee's response to the consultation. It was agreed that this would be a sensible approach.

There followed a discussion around TUPE to ascertain the general feeling for the Government's consultation. One of the main issues concerning lawyers and clients alike is whether or not the service provision change aspects of TUPE should be removed. It was reported that some clients felt they provided a degree of certainty although it was pointed out that recent case law has made the area more complex in any event.

7 ***Alemo-Herron*** - this was a case where the Advocate General had given his Opinion that a dynamic approach should be taken in relation to the transfer of collective agreements in a TUPE situation meaning that the collective agreement could transfer as long as it wasn't "unconditional and irreversible". The Advocate General concluded that this would not be the case in the UK as employees and employers could agree changes to the employment terms. It was noted however that this approach is not fully correct as Regulation 4 of TUPE prevents changes to terms and conditions which are in connection with the transfer. The Government is consulting on these particular provisions at the moment and have suggested in their consultation document that the UK may apply the one year limit on making changes to collective agreements available in the Acquired Rights Directive. It was not clear why the Government would opt for this exception. Using the exception in order to change terms and conditions of employment, would make Regulation 4 of TUPE redundant. It was further pointed out that the Government could simply legislate to make collective agreements static in nature.

Geys - this is the case about termination of employment and payment in lieu of notice and the effect of a termination not in accordance with the contract of employment. In this case the Court approved the elective theory of contract law whereby it is up to an employee to accept a breach of contract or affirm the contract and until such time as the employee has done this the contract will not be terminated. It was agreed by most Committee members that the decision is very difficult in practice and that in alleged gross misconduct cases where summary dismissal is implemented, employers may issue notice and then dismiss summarily in order to ensure that if the summary dismissal is held not to be justified that the contract has come to an end by virtue of notice having been served.