MINUTES OF MEETING

CITY OF LONDON LAW SOCIETY

EMPLOYMENT LAW COMMITTEE

Meeting held at Norton Rose Fulbright LLP, 3 More London Riverside, London SE1 2AQ on 8 June 2016 at 12:45 pm

Gary Freer, Chairman	Bryan Cave
Helena Derbyshire, Secretary	Skadden, Arps
Kate Brearley	Stephenson Harwood
William Dawson	Farrer
Paul Griffin	Norton Rose Fulbright
Michael Leftley	Addleshaw Goddard
Jane Mann	Fox Williams

Apologies:

Elaine Aarons	Withers
Oliver Brettle	White & Case
Helga Breen	DWF
Anthony Fincham	CMS Cameron McKenna LLP
Mark Greenburgh	Gowling WLG
John Evason	Baker & McKenzie
Ian Hunter	Bird & Bird
Sian Keall	Travers Smith
Mark Mansell	Allen & Overy
Laurence Rees	Reed Smith
Nick Robertson	Mayer Brown
Charles Wynn-Evans	Dechert
Kevin Hart	CLLS

1. Apologies were received from those listed as absent.

2. The Minutes of the last meeting were approved.

3. Matters arising

   It was noted that the Gender Pay Gap consultation had now closed and, following our discussions with the representatives from the Government Equalities Office, we would await the outcome of the consultation with interest.

4. Brexit

Members of the Committee discussed the upcoming Brexit vote.

The Committee had been asked to prepare a briefing note on the potential implications of a vote for Brexit. The members of the Committee were anxious about expressing a view as the issue was so political. Members of the Committee would not be able to speak on behalf of their firms.

The general view was that Brexit would have no immediate impact on employment laws and any potential changes would depend on the government at the time.

There are a number of European provisions that have already been gold-plated in the United Kingdom (for example, service provision change under TUPE).

There was a concern that the Government could repeal the decision in Marshall and reinstate the cap on discrimination compensation. This should have a significant impact on the number of discrimination claims brought.

The position following Brexit would depend on trade negotiations post vote, for example, whether the resulting trade agreements would follow the Norwegian model or take a more radical approach.

There were a number of less popular provisions in the United Kingdom that could be redrafted or clarified, particularly where European case law had expanded on European legislation. Examples include the Working Time Directive (the approach to sick pay –v- holiday pay for example) and Agency Workers Directive.

If the UK were no longer a party to the Rome I and Rome II conventions there could be more flexibility regarding choice of jurisdiction.

One area that was certainly likely to involve an increase in work was immigration.

Another consideration related to equal pay. In the light of European case law the UK's limitation of equal pay claims to back pay for two years had been extended to six years to mirror breach of contract claims. Members of the Committee speculated that limitations such as this could be repealed.

5. Trade Secrets Directive

The members present discussed the Trade Secrets Directive. This included an intimation that there might be a new test for injunctive relief.

The definition of a trade secret in the Directive is significantly wider than the approach taken in the UK and there was a discussion as to what was meant by information that had a "commercial value".

The Committee referred to articles by Fraser Younson and also a piece from Blackstone Chambers that referred to the "textured definition" of trade secrets. There was also a comment that this should not impact on employment competition.

There was a debate as to when private information could have commercial value and the Committee discussed the potential protection this might afford to celebrities.

6. BIS Call for Evidence on Non-Compete Clauses

The view of the Committee was that the provisions set out in the Call for Evidence were unsophisticated and disregarded existing case law and practice.

At the end of the Call for Evidence was a catch-all question as to any other approaches that could be considered to be anti-competitive.

The view was that the consultation could result in a requirement that employers pay to enforce non-compete provisions (as in Germany, where employees agree consideration at the start of the employment relationship and the employer then chooses whether or not to pay that amount to enforce the restrictions at the end).

The Committee thought that Courts could be relied upon to strike an appropriate balance and take into account financial hardship.

The Committee discussed the fact that they have seen the development of liquidated damages clauses in LLP Membership Agreements.

7. Any other business

The discussion on the Bank of England/PRA Consultation on the Buy Out of Variable Remuneration would be held over to the next meeting.

The next meeting would be on Wednesday 7 September at 12.45 at CMS Cameron McKenna.