



Minutes of Meeting of Council of The Society of Construction Law

Tuesday 9 January 2024, at 5.00pm

On-Line

1 Attendance

Hamish Lal, Paul Battrick, Michael Levenstein, Anthony Lavers, Jessica Neuberger, Shy Jackson, David Falkenstern, Andrea Stauber, Chris Sunderland; John Tackaberry KC, Rebecca Shorter, Sean Gibbs, Jonathan Pawlowski, Louise Forster, Karen Gough, and Jessica Tresham

Apologies

Matthew Taylor; Sarah Williams; and Lauren Adams

Present

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2 Minutes of the Last Meeting, 4 December 2023

The minutes of the "November Meeting" held on Monday 4 December 2023 at White & Case were approved by Council without any amendment or correction and signed by the Chairman, Hamish Lal.

Hamish thanked Council for all their time and for making the efforts to attend this on-line Meeting ahead of Council's Dinner scheduled to take on Monday 29 January 2024 at M Threadneedle St., 2 & 3 Threadneedle Walk, 60 Threadneedle Street, London, EC2R 8HP.

3 Matters Arising

There were no matters arising.

4 Main Items of the Meeting

There were two Main Items:

- The Consultants' Contracts; and
- SCL - France

4.1 The Consultants' Contracts

Council had been provided with *two* Notes from Jessica Tresham and Rebecca Shorter on (i) The Employment Law Advice from Doyle Clayton; and (ii) The Tax Law Advice from Doyle Clayton.

Jessica Tresham gave an outline of the process that she and Rebecca had followed post Council's decision to put Contracts in place with all the Consultants as an integral part of the improving good governance initiative. Put shortly, Jessica and Rebecca explained:

Employment Law Advice

- That the Legal Advice from Doyle Clayton had concluded that there was a risk to SCL that Jill Ward and France Whitehead could be “Workers” for the purposes of employment law. A **worker** is an individual who works under a “contract of employment” or a “contract for services” (i.e., one person agrees to provides services to another). This is effectively a hybrid category between an employee and a self-employed contractor (although all employees are also workers).
- The learning point here for Council is that we all should ensure when engaging with our consultants going forward that they have the autonomy in line with the self-employed heading in the Note discussed above.
- The Legal Advice was clear that SCL should put in place written contracts with all Consultants. In that context and as discussed in the November Meeting of Council, draft written Contracts had been reviewed by Rebecca; Jess; Karen; Paul and Hamish. Written Contracts would now be agreed with each Consultant inline with the Legal Advice and guidance from Doyle Clayton.

Tax Law Advice

- With respect to the Tax Law Advice, many of the factual considerations for assessing whether someone is self-employed or not are the same in employment and tax law. From a tax law perspective, there are only employees and self-employed workers. The third category of ‘worker’ does not exist in tax law.
- Doyle Clayton’s assessment is that from a tax perspective, if it investigated, HMRC could consider Frances Whitehead and Jill Ward to be employed.
- Council should ensure when engaging with our consultants going forward that they have greater autonomy and that we work with them on a more arms’ length basis, as self-employed consultants. For example, it is recommended that we no longer provide direct named contact details for the consultants on the SCL website. SCL is also advised to move to a payment per project arrangement (as for example, SCL does with its bookkeeper), instead of open-ended hourly rate arrangements.
- With Doyle Clayton’s support, we are hoping to put in place written contracts with all of the consultants shortly. This will serve good governance and provide clarity going forwards; it is Doyle Clayton’s recommendation that Council does this.

As explained
in its order
of advice

Council was reminded that by entering into a written form of contract, the historical and ongoing risks are not simply extinguished. These will also need to be kept under periodic review (at least annually) to ensure that Council continues to work with the consultants on an arms’ length basis.

Jessica and Rebecca also explained that after the Contracts have been entered into that they are also planning to prepare a policy document for Council for future reference containing best practice guidance on working with our consultants. Hamish thanked Rebecca and Jessica for all their time, patience and understanding; and asked that we should please seek to conclude all the consultancy Contracts with all Consultants as soon as practicable.

Following several questions from Council it was agreed that Council should of course follow all the legal advice from Doyle Clayton and seek to agree written contracts with the Consultants without further delay. It was agreed that Council would not at this stage need legal advice on prospects of success at employment tribunal and / or HMRC.

Jill Ward

Council was of course aware that Jill Ward had by email of 25 October 2023 (15:46) written to the Officers 'resigning' as a Consultant having "decided to step away from my role with SCL and pursue other interests". Council was aware that John and Karen had met with and were meeting with Jill and also Frances. Happily, John reported that Jill and Frances retain a strong positive attitude. Hamish thanked John and stressed the need for Jill to please decide what she wants to do. It was very good news that Jill was attending the Dinner on January 29th.

[Action: Rebecca and Jess to please conclude Contracts with Consultants in line with the Legal Advice]

4.2 SCL - France

Hamish explained that SCL-France had now been formed and that it was holding a Launch Event on 17 January 2024 in Paris. Put simply, a number of emails amongst Council had taken place just before Christmas and Hamish explained that patently there were a number of opposing views. Put another way it was unlikely that there would be unanimous support. Hamish also explained that this specific request from SCL – France ought to be considered out with the wider discussions about the structure of, and good governance within, SCL International.

Paul Battrick gave a short overview of previous examples of SCL UK supporting other SCLs. These included an array ranging from providing seed funding to under-writing inaugural conferences. Following a substantive discussion amongst Council Members, Hamish asked Members to vote in respect of the proposition that SCL UK would provide SCL France with Eur 15K,

EUR 7K WOULD BE TRANSFERRED TO SCL-UK TO ASSIST IT WITH AN EVENT.

The proposition was supported by the majority.

[Post Meeting Note: Hamish issued an email Tue 09/01/2024 18:41 confirming "The SCL-France request was approved. 10 Members of Council voted in favour and 6 against".]

Dates of Next Three Council meetings:

- February Meeting: Monday February 19th, 2024 at CMS [with thanks to Matthew]
- March Meeting: Monday March 18th, 2024 at Kroll [with thanks to David for hosting]
- April Meeting: Monday April 15th, 2024 at White & Case [with thanks to Rebecca]

Approved 19-Feb-2024.