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**LEGAL SERVICES
BOARD**

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18 June 2013

Dear Elizabeth,

Section 120 report: damages-based agreements

This letter includes a formal notice of the requirement for the Office for Legal Complaints to provide interim and final reports to the Legal Services Board for publication under Section 120 of the Legal Services Act 2007, which has been discussed in draft with your team. The request is in relation to the matter of complaints received by the Ombudsman scheme concerning transparency of the cost of legal services and in particular transparency of damages-based agreements (DBA).

You have previously highlighted consumer confusion with what is actually covered under certain policies and a common theme in costs complaints, that they could be avoided if the lawyers had been transparent about the cost of their services. As we discussed at the Board's meeting on 23 May, your Annual Report for the year ending 31 March 2013, suggests that the introduction by the Government of regulations allowing a greater use of DBAs in civil litigation may result in further consumer confusion. We share this concern and later in the same meeting my Board discussed the risks relating to DBAs and the wider business conduct issues associated with them, which following market liberalisation, will continue to be of a greater concern for regulators. In particular, the Board noted concerns around cost, service quality and transparency. These are all issues that have also recently been highlighted in the Consumer Panel's report on empowering consumers¹.

The Board believe that along with yourselves and the approved regulators, we should remain cognisant of the risks posed by DBAs and the potential for the use of

¹http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/ChooseUse_Phase1report.pdf

such funding arrangements to increase. You said at the meeting that this was an area which you proposed to monitor closely.

We would welcome the results of your monitoring of complaints about DBAs being in a form where it could inform wider policy making and have outlined, in the attached notice, the information that we would expect to be gathered. We are keen to understand both the totality of complaints made and more detail about those which are accepted for investigation. We would be grateful if you could confirm by 15 July the data that you propose to collect and provide to us in response to this notice. We will of course be willing to revise this notice in the light of your proposed response and alternative suggestions you might make on data that can be collected and published. Tom Peplow is the contact at the LSB in relation to any questions about this request – Tom.Peplow@legalservicesboard.org.uk.

We have also asked the approved regulators to monitor developments in the area of price transparency in general as well as the transparency of DBAs to ensure that good consumer outcomes are secured. I enclose a copy of the letter which we have sent them in parallel.

Yours sincerely,



Chris Kenny
Chief Executive



Annex A: Reporting requirement: Section 120 Legal Services Act 2007

1. This Notice is served on the Office for Legal Complaints ("the OLC") by the Legal Services Board ("LSB") under Section 120 of the Legal Services Act 2007 and requires you to prepare and give to the LSB interim and final reports in respect of the matters specified in paragraph 2, within the period specified in paragraph 3.
2. The OLC must prepare and give interim and final reports (in PDF or Word format) providing the following specified information and any other qualitative and factual detail which the OLC considers relevant to the LSB's investigation. The raw data the reports are based on must also be anonymised and provided to the LSB in excel format -
 - An assessment of the number and proportion of all complaints received by the Legal Ombudsman which concern a perceived lack of price transparency (where costs information is deficient) broken down if possible by the type of funding arrangement used (such as damages-based agreements, conditional fee agreements, fixed fee, hourly rates and any other category you think helpful);
 - A breakdown of the cases accepted for investigation by the Legal Ombudsman which concern a perceived lack of price transparency (where costs information is deficient) by:
 - The type of funding arrangement used (such as damages-based agreements, conditional fee agreements, fixed fee, hourly rates and any other category you think helpful);
 - The type of consumer complaining;
 - The type of professional being complained about;
 - The area of law (such as family, personal injury, employment, criminal, immigration and any other categories you think helpful).
 - Any common features of the business models (such as claims management services, immigration services and any other models you think relevant) involved in complaints received by the Ombudsman which concern a perceived lack of price transparency (where costs information is deficient), that the Ombudsman believes is causing confusion (including where services are being delivered through the web), the extent to which the Ombudsman believes that this confusion may be being deliberately fostered and how the Ombudsman reacts in relation to such cases;
 - Any other information that the Ombudsman thinks will assist our understanding of the problems, their frequency, the causes and the impacts regarding complaints received by the Ombudsman which concern a perceived lack of price transparency (where costs information is deficient);

- The reports should be as comprehensive as possible in their time coverage, with each report covering complaints received in at least a four month period. The interim report covering complaints received prior to 31 May 2014 and the final report covering complaints received between 1 June 2014 to 31 March 2015;
- 3. You are required to provide the LSB with an interim report (along with the anonymised raw data used) by 1 June 2014 and a final report (along with the anonymised raw data used) by 1 April 2015.
- 4. The LSB reserves the right to amend or revoke this notice, by giving further notice to the OLC.

Legal Services Board
June 2013



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[By email only]

29 May 2013

Damages-based agreements

On 7 February, I wrote to you and the other approved regulators, asking for views on the risks posed by the damages-based agreements (DBAs) regulations coming into force on 1 April. The Government introduced the regulations to allow greater use of DBAs in civil litigation and we wanted to know what approaches you had planned to deal with the risks. At their meeting on 23 May, the LSB's Board considered the regulators' responses.

The Board were disappointed with the time it took for regulators to respond to the 7 February letter and hope this was not a reflection of the importance that you place on emerging risks within your regulatory framework.

In their discussion, the Board recognised that the risks in this area are not limited to the use of DBAs but a reflection of wider conduct of business type issues that could be a greater concern for regulators following market liberalisation. In particular the Board noted concerns around cost, service quality and price transparency, the combination of which could lead to "misselling", a form of consumer detriment with which traditional legal regulation has not had to contend. These are all issues that have recently been highlighted in the Consumer Panel's report on empowering consumers¹. The Legal Ombudsman has also commented on how many complaints concerning costs could have easily been avoided if the lawyers had been more open and transparent about the cost of their services.

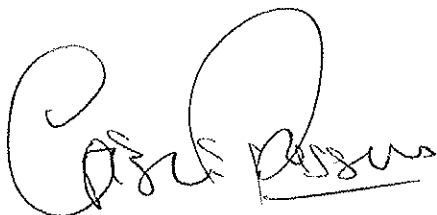
We have accepted your assurances that the risks associated with DBAs for those you regulate will be tackled through your regulatory framework and focus on specific risks. We therefore do not propose to introduce specific guidance in response to the DBA regulations at this stage.

¹http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/ChooseUse_Phase1report.pdf

However, we believe that along with the regulators and the Office for Legal Complaints, we should remain cognisant of the risks posed by DBAs and the potential for the use of such funding arrangements to increase. We therefore hope that you will be monitoring developments in the area of price transparency in general and transparency of DBAs in particular to ensure that good consumer outcomes are secured. We would expect you to gather information on which practitioners were using such arrangements and reflect this information in your supervision.

The robustness of your assessment of the risks posed by DBAs and the action taken in response to them will be a valuable indicator of the success of your regulatory risk framework. You will of course be aware that both your Board and ours were concerned to improve the focus on risk frameworks and targeting in your self assessment and our response.

We look forward to seeing the results of your work in this area and the effective use of your risk framework to deliver the appropriate outcomes focused regulatory action on DBAs.

A handwritten signature in black ink, appearing to read 'Crispin Passmore', with a horizontal line underneath the name.

Crispin Passmore
Strategy Director