



LEGAL SERVICES
BOARD

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[By email only]

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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.

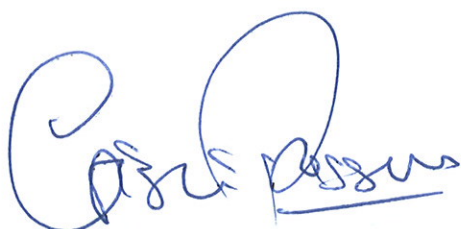
We have accepted your assurances that the risks associated with DBAs for those you regulate will be tackled through your regulatory framework and focus on specific risks. We therefore do not propose to introduce specific guidance in response to the DBA regulations at this stage.

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 blue ink, appearing to read 'Crispin Passmore', with a horizontal line underneath the name.

Crispin Passmore
Strategy Director