



Nicholas Bacon QC, Alan Tunkel and Greg Cox
Remuneration Committee
Bar Council

12th May 2017

Dear Nicholas, Alan and Greg,

I have been asked to respond to your letter of 28 April 2017 on behalf of the Chancery Bar Association.

With this letter, I have enclosed two documents produced on behalf of the Chancery Bar Association for the use of its members. The first is a long note drafted by David Holland QC dated 8 March 2013, paragraphs 10 to 21 of which deal with the new rules on DBAs. The second is the current note accompanying the Association's standard DBA, downloadable from its website. You will see that it was originally drafted in May 2013, and reviewed with no material change in April 2016, such that DBAs continue to be described as "new and untested". Both documents express caution in the use of DBAs, given the questions about the limits.

We have obtained the usage statistics from the website to show how often the DBA has been downloaded. They show that the DBA page was accessed fewer than 10 times in the past year, and I suspect at least three of them were me.

We have also placed a note about the issue in the Association email newsletter, asking anyone who has used a DBA recently to contact us. No one did so.

We can therefore answer your questions as follows:

1. Uptake of DBAs
 - a. Yes, in principle some members are prepared to act on DBAs.
 - b. The usage statistics and anecdotal evidence suggest that they are used only very rarely.
 - c. On the assumptions (i) that most DBAs entered into would have been using the Association's standard form, and (ii) that only half of the times the Association's DBA was accessed results in a DBA being concluded, we think no more than 5 DBAs in the last year.
2. Inhibition on take up of DBAs
 - a. The caution expressed in our notes about the limits and enforceability of DBAs is bound to have had an inhibiting effect on the uptake of DBAs. It may also be that the areas of practice usually covered by our members are under less pressure as to fees.
 - b. Yes, there is a perception of risk that DBAs might not be enforceable, at least partly fuelled by our own notes.
 - c. Yes. As explained in David Holland's note, there is uncertainty as to how recoverable costs under a DBA will be assessed.
3. Besides the point about early termination which you raise, it would be helpful if the following issues could also be resolved:
 - a. Whether the word "sums" in reg 4(3) includes costs as well as damages/other forms of recovery. We think not, given the definition of "payment" in reg 1(2).
 - b. Clarification of whether higher percentages may be recovered on appeal than at trial, and if so what.
 - c. Whether there is any way of the barrister enforcing payment against the client prior to the client enforcing the judgment against the other party.

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- d. Whether there is any scope under the Regulations for hybrid agreements that result in the lawyer receiving a discounted fee when the success condition is not met.
 - e. How litigants under DBAs are to comply with the costs management/ budgeting regime.

We would also take this opportunity to thank you for the work you and your committee are doing on behalf of the profession.

Yours sincerely,

Alexander Learmonth
For and on behalf of the Chancery Bar Association.