

# A Step in the Right Direction - Government Acknowledges the Need for Clarification of the DBA Regulations 2013

Related Lawyers:

Related Practice Areas: **Competition Disputes, Human Rights and Environmental Disputes**

On 7 February 2019, the government published the results of its post-implementation review of the main legislation that implemented the costs and funding aspects of the Jackson reforms in April 2013: Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2013 (LASPO). The review covers the introduction of damages-based agreements (DBAs), as well as the removal of recoverability for conditional fee agreement (CFA) success fees and after-the-event (ATE) insurance premiums.

## DBAs

DBAs were introduced as a funding method for civil litigation to increase funding options. Under a DBA lawyers are not paid if they lose a case but may take a percentage of the damages awarded to their client as their fee if the case is successful. DBAs are similar to CFAs in that they are each 'no win no fee' agreements, but in a DBA the lawyer's payment is linked to the damages awarded.

## The report

Almost all respondents agreed that DBAs are rarely used and that the current DBA regulations are not effective and require clarification. The report states there is "unanimous support amongst respondents that the regulations would benefit from reform and redrafting to ensure DBAs are a more viable funding method for a greater number of cases". Particular concerns cited include:

- the lack of payment of a reasonable sum for work done on termination
- uncertainty around early termination and the indemnity principle
- the payment of counsel's fees and
- uncertainty around whether 'sequential' hybrid DBAs are allowed under the current Regulations.

'Hybrid DBAs' allow DBAs to be combined with another form of funding agreement so that the lawyer can be paid a fee even if the case is unsuccessful. The report records that commercial lawyers strongly argued for their use, particularly in high-value complex claims stating this could address a lack of flexible funding options in this jurisdiction.

The government accepts that the DBA regulations would benefit from additional clarity and certainty and says it will give careful consideration to the way forward in light of the outcome of the independent review of the drafting of the regulations, which is being undertaken by Professor Rachael Mulheron and Nicholas Bacon QC. Their report is expected later in 2019.

## Conclusion

This clear acknowledgement that the current DBA regulations require improvement is a welcome step. Because DBAs are seldom used, an important opportunity to increase access to justice has been missed.

It is hoped that the aforementioned independent review will address the prohibition on hybrid DBAs currently in place, seen by many as illogical in circumstances where the same outcome can be achieved using a third-party funder.

---

© 2020 Hausfeld - HAUSFELD® is a registered trademark