

What unresolved issues remain - both legal  
and practical - over the termination of a CFA  
following the spate of recent cases including  
Roman v AXA  
and  
Walsh v Greystone Financial Services?

25 June 2020

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# THE LOCK-DOWN LOOK?



# EARLY ADVICE



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# ASSIGNMENT – PRE-2017

- *At common law*
- *1875 & 1925*
- *In equity*
- *Retainer = chose in action*
- *Consideration required?*
- *CFA even a chose in action?*

# ASSIGNMENT – PRE-2017

- *Benefit & Burden*
- *Exception: personal skill & confidence*
- *Exception: conditional benefit*
  
- *Novation*

# March 2017 - *PLEVIN*

- CFA assignable
- Can transfer from Firm A to Firm B
- Variation = amend or discharge?
- Look at substance rather than form

# December 2017 - *BUDANA*

- Transfer through Deeds is not a termination
- Even if there had been a repudiatory breach, that alone could not amount to termination
- Client's consent was crucial
- Different benefit/burden
- In fact, novation but LASPO not biting on first CFA

# December 2018 - *Roman*

- RTA May 2012
- 1<sup>st</sup> CFA – 100% - Law Society Model
- October 2015 – PI Dept closed
- Firm A: dept closing; *transfer; Firm B will continue to act on the same basis*
- Firm B: *Firm A unable to continue to act; papers passed to us; no obligation; we will continue to act on a CFA*

# ...Provisional Assessment



- “Entire contract” not performed
- Client elected to affirm

# Appeal – HHJ Wulwik

- Firm A terminated: not permitted under CFA, so repudiatory breach
- No suggestion of first CFA continuing
- Signing new CFA was acceptance of the repudiatory breach
- No acceptance of liability for part-performance



# PAUSE – REFILLS!



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# SOLICITOR'S LIEN - WALSH

- Who terminated the retainer?
  - If client, no power to order delivery
  - If solicitor, subject to practice of court
- Usual practice: order delivery subject to undertaking
- “in the course of litigation”?

# CONCLUSION



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# LOOK OUT FOR:

- 3 + 9 = Costs [Newsletter]
- 3 + 9 = Costs ADR [Full ADR service]
- 3 + 9 = Costs + Coffee [Vlog coming soon!]

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