

Retainers

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KAP 007⁵

Zuberi v Lexlaw

A client enters into a contract of retainer with solicitors to prosecute a claim. The contract provides that in the event of success the solicitors will be entitled to a share of the recoveries. The client achieves success by means of a settlement of the claim; and the solicitors claim their share. But the contract also contains a clause (“clause 6.2”) which says that if the client terminates the retainer prematurely (which she did not), she must pay the solicitors’ normal fees and disbursements. Does the existence of that clause invalidate the whole contract?

Court and Legal Service Act 1990 – s.58AA(4)

(4) The agreement—

(a) must be in writing;

(aa) ...

(b) if regulations so provide, must not provide for a payment above a prescribed amount or for a payment above an amount calculated in a prescribed manner;

(c) must comply with such other requirements as to its terms and conditions as are prescribed; and

(d) must be made only after the person providing services under the agreement has complied with such requirements (if any) as may be prescribed as to the provision of information.

DBA Regs 2013, Reg. 4

“(1) In respect of any claim or proceedings, other than an employment matter, to which these Regulations apply, a damages-based agreement must not require an amount to be paid by the client other than—

(a) the payment, net of—

(i) any costs ...; and

(ii) ... any sum in respect of disbursements ...in respect of counsel’s fees,...; and

(b) any expenses incurred by the representative...

...

(3) ... a damages-based agreement must not provide for a payment above an amount which, including VAT, is equal to 50% of the sums ultimately recovered by the client.”

DBA Regs 2013, Reg. 8

“(1) In an employment matter, the additional requirements prescribed for the purposes of section 58AA(4)(c) of the Act are that the terms and conditions of a damages-based agreement must be in accordance with paragraphs (2), (3) and (4).

(2) If the agreement is terminated, the representatives may not charge the client more than the representative's costs and expenses for the work undertaken in respect of the client's claim or proceedings...”

Take Away Points - Zuberi



- Sequential hybrid DBAs appear to be sanctioned;
- Termination provisions do not render a retainer which is otherwise a DBA unlawful;
- concurrent hybrid DBAs are not likely to be permitted.

Cakebread v Fitzwilliam



- DBAs are still risky!
- Get someone else to deal with your fees.

Candey Ltd v Bosheh & Or

- CFA
- Fraud alleged by solicitor
- Claim for £3 million as value of C's services
- Implied duty of good faith?
- Express duty: “always seek to recover costs”

Candey Ltd v Bosheh & Or

- CFAs carry risks too!
- Client might choose an option that does not mean a “win”
- Client not obliged to think of firm’s interests



Farrer v Candey Ltd v Miller

- DBA
- Assignment of action to firm
- 3 rules:
 - Assignment of bare cause of action
 - Assignment of causes of action by clients to solicitors
 - Champerty

Take Away Points – F v Candey



- Aggression / greed will find its come-uppance!
- We are still operating on islands of legality in a sea of illegality

Retainers

THANK YOU!

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