



NEW SQUARE

THE RT HON SIR RUPERT JACKSON

Professor Rachael Mulheron and
Nicholas Bacon QC

1st March 2019

Dear Rachael and Nicholas,

Damages-Based Agreements

I have read with admiration your package of proposed DBA reforms. I agree with your analysis and support the proposals.

In my 2010 Report I recommended abrogating the common law 'indemnity principle' and adopting the Ontario model for DBAs. In the event the Government rejected my proposal for abrogating the indemnity principle. In those circumstances, the Ontario model is not a satisfactory model for DBAs in England and Wales. I therefore agree with your proposal to replace the Ontario model with the success fee model.

I particularly welcome your proposal expressly to permit hybrid DBAs. This will undoubtedly facilitate access to justice at proportionate cost for court users. If both lawyer and client wish to enter into such an arrangement (which unlike pre-2013 CFAs causes no prejudice whatsoever to the opposing party), they should be permitted to do so.

You have both invested much time and effort in this project. I wish you every success in the outcome.

Yours ever,

DBA/tr