

# LCLCBA

1. These submissions are made in response to the Civil Justice Council's Notice of Conference and Call for Position Papers.
2. These submissions are made on behalf of the London Common Law and Commercial Bar Association. The LCLCBA is one the largest Specialist Bar Associations with a wide membership amongst civil and commercial practitioners in London.
3. There are three points on which comment is sought:
  1. The types of cases being taken on and not being taken on by law firms
  2. The funding of civil litigation in the light of changes to CFAs and the introduction of DBAs
  3. Experiences of cost budgeting and the management of cases through the Courts
4. In relation to 1, we have insufficient knowledge in order to be able to make helpful comments at this stage
5. In relation to 2, a large number of CFAs were entered into prior to the 1 April 2013 cut off date and many of those cases are still working their way through the system. CFAs entered into after the cut off date are unattractive to Counsel because the uplift is not recoverable from the losing party. DBAs are also unpopular with Counsel for a number of reasons. We refer to the Bar Council response to this consultation and agree with their comments. At the moment the regulations concerning DBAs are rudimentary and there are many uncertainties. Many members of the bar have a fundamental unease about any fee arrangements, which may engender a conflict of interest between client and lawyer.
6. In relation to 3, our members have considerable concerns that following the Mitchell v News Group Newspaper Limited, [\[2013\] EWCA Civ 1537](#) case, and the difficulties which are now experienced in obtaining relief from sanctions where a party is in default of a rule or an order for directions, that there will be a substantial increase in "ambush" tactics and in satellite litigation. The result is likely to be an increase in costs overall and in rough justice where the interests of individual parties will be sacrificed in the belief that this will result in greater procedural efficiency overall.
7. In principle we accept the notion of costs budgeting although the Court must be flexible in allowing amendment of a budget in the event of a change of circumstances. It is often extremely difficult to make any accurate costs budget given the very great uncertainties that exist in litigation.

8. In relation to case management this can work effectively if the Court has had sufficient time to read all the papers and understand the issues fully. Case management can be particularly effective where one judge (or one with a named alternate) is responsible for managing the case and is the trial judge. Where a case is managed on an ad hoc basis by different judges, and/or by a judge who will not hear the trial, there is a danger, that unnecessary costs may be incurred by the parties.

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Chair of LCLCBA  
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