I have a CFA with my client already. What if I wait until after 1st April to ask counsel to sign up?

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Bear in mind that the powers that be have not addressed the omission of transitional arrangements where counsel is asked to enter into CFAs after 1st April whereas the solicitor's CFA with client is pre-1st April.

It is not uncommon for counsel to be involved weeks, months and years after solicitors have incepted a CFA with their client. Hence counsel's CFA with the solicitor will be commensurately later.

In the ordinary course of events, one can therefore envisage counsel being offered cases on a CFA after 1st April 2013 where the solicitor's CFA with the client precedes 1st April 2013.

As the draft regulations stand, this means the former CFA will be under the new regime, whereas the latter CFA is under the old regime. How will that work in practice? The Bar Council discusses the issues in this briefing: http://t.co/cj76GT170B

There are suggestions for simple revisions of the drafting that would cure the identified transitional problems. However, the House of Lords ducked the issue at the end of February, and it cannot be supposed the House of Commons will grasp the issue when it finalises the secondary legislation this month.

This writer is not sure solicitors can run the risk that the Commons will resolve the issue, not least because of the risk it will be too late to address transitional difficulties if the Commons make no changes. This is all the more so where there is a solution.

To avoid the predicted satellite litigation an obvious solution, whilst time permits, is to harmonise by ensuring both solicitor/client and solicitor/barrister CFAs are pre 1st April 2013.

The difficulty is getting sufficient information to counsel for the risk assessment. There can be no substitutes for doing things the correct way. However, it looks as if the botched implementation is going to force the legal professionals into a flurry of activity if the interests of clients are to be protected.

The other issue is arranging ATE insurance. Insurers are reporting a mounting backlog. They are not mentioning the undoubted boom in business, although practical issues have to be recognised.

Some commentators are making siren noises about professional indemnity risks, although this writer senses pressure-selling may be at a play, and wonders how it can be argued it was negligent of a solicitor not to have rushed headlong into purchasing ATE cover on every case before it became apparent that the transitional arrangements were going to be so messy (putting it another way, would the overcautious solicitor who had purchased ATE early in the life of a given claim be able to resist arguments he had "pulled the trigger" too early, at a time when the transitional provisions were not known?).

One thing is for sure, chambers resources will also be stretched once solicitors realise the benefits of harmonising CFAs with counsel before 1st April, and it is necessary to act without delay.