

CHAIR'S INTERIM REPORT – JANUARY 2025

This is my third Interim Report to Members as Chair of Bar Mutual. These reports are an important channel for communications by Bar Mutual to its Members because they explain changes to the Terms of Cover and the calculation of the premium which you will pay for the next policy year. I hope that Members will take the time to read it, and I encourage those of you who are regular readers of the Chair's Interim Report to remind your colleagues of its benefits.

In this Interim Report I introduce our new Parental Leave Policy, provide an update on Bar Mutual's financial position and explain changes to underwriting rates for the 2025/26 policy year renewal and related underwriting matters. I also report on an important change to the Terms of Cover that will benefit Members facing awards from the Legal Ombudsman. I have some observations on the need to use and support the "top-up" insurance facility providing cover above Bar Mutual's limit of £2.5m. Finally, I discuss changes in the composition of the Board and the work of my fellow Bar Mutual Directors.

Parental Leave Policy

I am pleased to say that the Board has agreed a new parental leave policy. The objective of the change is to encourage Members taking parental leave to retain their practicing certificates. This allows them to continue in practice for the period of their parental leave, and in particular to preserve their practices by the use of keeping in touch days. The new Leave Premium payable by Members taking parental leave should in most cases make it attractive for Members to maintain their practicing certificates at a modest insurance cost. The Guidance Note on Bar Mutual's website explains the operation of the parental leave policy with worked examples.

The Board considers that the new policy is fair to all Members, both those taking parental leave and those not taking such leave. Some Members may ask why those taking parental leave cannot be given a complete holiday from paying premium. The answer is that Members are paying for cover in respect of work done prior to taking leave. The new policy means that the cover is at a reduced rate. Those who take parental leave will pay smaller premiums on their return to work because their earnings have reduced.

Financial Position

Bar Mutual continues to operate on strong financial foundations. The Annual Report and Financial Statements for the year ended 31 March 2024 ("**the Accounts**") reported an operating surplus for the year of £1.484m. The forecast operating result to 31 March 2025 is for a surplus in excess of this figure, but a degree of caution is warranted as insurance operations are by their nature volatile. In addition to producing a positive operating position, Bar Mutual exceeds its regulatory capital requirement – its Solvency Capital Requirement ("**SCR**") – by a healthy margin. As a result, the ratio between Bar Mutual's SCR and its qualifying regulatory capital, which was 159% in the Accounts, is forecast to improve to 180.6% for the year ending 31 March 2025.

The 2025/26 Policy Year Renewal

This year, in addition to reporting on the rates for the 2025/26 policy year, there are a number of additional areas I need to cover.

Rates for Areas of Practice

In the Accounts Members were alerted to the decision of the Board to merge Admiralty, Competition, European and International Law with Commercial and Financial Services. The four practice areas being merged into Commercial and Financial Services are effectively sub-categories of commercial work, and given that they are all very small practice areas (in terms of the premium paid to Bar Mutual), their rates are likely to be more stable in the long term by folding them into Commercial and Financial Services. Admiralty, for example, generated premium income of less than £20,000 for the 2024/25 policy year. Therefore, a single relatively modest claim would result in a radical increase in the rate for Admiralty. The Accounts also noted that a result of this change was that some Members might see an increase in their premium, the rate for the smaller merged areas of practice of 0.25% rising to 0.45%, which is the rate for Commercial and Financial Services for the 2025/26 policy year (see below). Thus a Member declaring income of £50,000 from Admiralty will see a modest premium increase of £100. However, they will also now have the long term benefit of being part of a much larger practice area, which is to avoid the risk of a far higher rate increase in the event of Admiralty generating even one relatively large claim.

The fee income of the Bar for the 2023 calendar year grew by 12.5% on the previous year. This resulted in the notional underwriting rates for most areas or practice either improving or stabilising. Consequently, I am pleased to report that no area of practice will see an increase in their underwriting rate at the 2025/26 renewal (save for the small practice areas mentioned above); and the following eight practice areas will see reductions in their respective rates.

Area	2024/25 Rate	2025/26 Rate
Chancery: Contentious	1.75%	1.65%
Commercial & Financial Services	0.60%	0.45%
Construction	0.40%	0.35%
Crime	0.40%	0.35%
Family - Children	0.18%	0.15%
Insolvency	1.10%	1.00%
Landlord & Tenant: Residential	1.35%	1.10%
Other Common Law	1.80%	1.60%

The Minimum Premium

The minimum premium was reduced for the 2024/25 renewal from £165 to £155 including insurance premium tax ("IPT"). As the fixed costs are projected to reduce again in the coming year, the minimum premium for the 2025/26 policy year will be £127 including IPT. This reduction in the minimum premium means that Members of Bar Mutual with the lowest fee income will see their premiums reduce again this year.

Premium Deferral

Members will know that following periods of significant premium deferrals (27.5% for both the 2017/18 and 2018/19 policy years) the premium deferral was gradually reduced, and none has been applied since the 2022/23 policy year.

As Members will also know, the claims experience on the 2019/20 policy year proved to be especially punishing for Bar Mutual. This underlined the importance of ensuring that Bar Mutual carries a healthy surplus so that it can absorb unanticipated changes

to its claims experience or a collapse in its investment income, or indeed both happening together.

Consideration was given this year to reinstating the premium deferral at a modest level, because the forecast result to 31 March 2025 is encouraging. However, the Board instead opted for caution, and that decision appears to have been vindicated. Although at the time of writing this Interim Report Bar Mutual's investment holdings are still forecast to generate a meaningful return, the level of the forecast investment income has reduced in light of the volatility in the markets. Moreover, there is a risk that the relatively benign claims experience to December 2024 may be turning, with some very large claims against Members emerging in December.

Mindful, therefore, of Bar Mutual's founding principles of providing stability and security to the self-employed Bar, the Board decided that no premium deferral would be provided for the 2025/26 policy year.

A second decision the Board made relevant to the premium deferral is its decision to close the 2017/18 policy year. The value of the premium deferral for this year was £4.8m. As a result, Bar Mutual now has no entitlement to call for payment of any of the premium deferral applied to Members' premiums for the 2017/18 policy year. The premium deferral applied to that year was 27.5%.

Underwriting Treatment of Categories of Members

In the course of introducing the updated IT system for Bar Mutual, which I covered in my last report, the Board has looked afresh at the insurance of new Members and Members embarking on periods of parental leave.

I introduced the new Parental Leave policy at the start of this report.

In relation to new Members, essentially Members purchasing insurance for the first time following pupillage, the Board has simplified the process. Previously, Members were treated differently depending on their date of joining Bar Mutual, their forecast fee income and whether they wished to purchase limits of cover above the compulsory limit of £0.5m. The process has now been simplified and so, from the 2025/26 policy year (i) all self-employed Members (not Entities) will pay the minimum premium regardless of the date they join Bar Mutual and so no new Member will be required to provide a forecast of their income; (ii) all new Members (again not Entities) will pay the same premium for additional limits of cover above £0.5m, the Optional Premium; and (iii) self-employed Members returning to practice more than three years after ceasing their practice will be treated as though they were new Members and will therefore be charged the minimum premium for the year they return to practice.

Terms of Cover

As a mutual insurance company, one of Bar Mutual's core objectives is to meet the needs of its Members by providing them with the insurance cover they require. The terms of cover of Bar Mutual are therefore reviewed regularly by the Board in light of legal and practical developments, to ensure that they are functioning clearly and properly, in the interests of our Members. Whilst the Board endeavours to ensure that the Terms of Cover provided by Bar Mutual protect the Members against a wide range of risks and losses arising from their practice as barristers, as a regulated insurance company the Board also has to ensure that the Terms of Cover are not so wide as to drain Bar Mutual's financial resources or to threaten its future viability.

In the course of the year one amendment to the Terms of Cover was introduced, and it would be beneficial for me to explain a type of dispute that is not covered by the Terms of Cover and to mention an issue relating to the notification of claims.

It has long been the Board's intention and understanding that the Terms of Cover do not provide cover for pure fee disputes. The Court of Appeal's decision in *Royal Sun Alliance v. Tughans (A Firm)* [2024] 1WLR 1561 caused the Board to conduct a review of the Terms of Cover. Having taken legal advice, the Board concluded that the existing Terms of Cover would not respond to a claim for unpaid fees or the return of fees that had not been earned. However, it is desirable that this is clear. The Board also decided that the provision in the Terms of Cover excluding awards by the Legal Ombudsman requiring repayment, reduction or waiver of fees (3.1 (iii)) potentially gave rise to the unequal treatment of Members because, experience had shown that the Legal Ombudsman could order any one of these remedies on the basis of findings of negligence. The exclusion at clause 3.1 (iii) has therefore been amended as follows:

3.1 the liability of Bar Mutual under these Terms of Cover shall exclude:

(iii) any award requiring repayment, reduction or waiver of any fees in whole or in part ~~to the extent that it does not form part of the compensation for a Claim, or is not of a compensatory nature (and shall also exclude any associated liabilities, costs and expenses) ordered by the Legal Ombudsman, and any order in any court proceedings brought to enforce payment of any such award.~~

In the course of the 2024/25 policy year, clarification was sought by Members about cover for claims arising from a Member's involvement with Chambers' Complaints Committees and Pupillage Committees. There is no indemnity for such claims under the Terms of Cover. These claims do not involve the provision of Legal Services, which is defined in the Terms of Cover as "*Legal advice representation and drafting or settling any statement of case witness statement affidavit or other legal document, subject to the exclusions set out in clause 3.1(vii).*"

Bar Mutual's Terms of Cover provide that Members should notify, as soon as practicable, any (i) Circumstance that may subsequently give rise to a Claim or Disciplinary Proceedings, (ii) Claim and (iii) Disciplinary Proceedings. The Terms of Cover also requires Members to forward every letter, claim form, application and process to BMIF upon receipt; and upon request give to Bar Mutual such further information and render such assistance as it may reasonably require.

Members will be aware that where an actual claim is brought against them, there is an implied waiver of privilege so that Members are entitled to provide Bar Mutual with copies of privileged documents, for example, copies of the advice they provided to the client. However, the position is very different if the claim is only threatened or where the Member is simply concerned that a claim may be intimated in the future. In those circumstances there may be no implied waiver and so it is important that the client's privilege and confidentiality is preserved.

Accordingly, where a Claim or Disciplinary Proceedings are only intimated against Members, or where Members are concerned that they may be intimated in the future, Members must bear in mind their professional duties in relation to privilege and client confidentiality. They should therefore contact Bar Mutual to discuss what information

can be provided to them when notifying such matters. Guidance on this is provided on Bar Mutual's website.

The Bar Mutual Limit of Insurance and Top Up Insurance

The BSB Handbook requires Members to have "adequate insurance" taking into account "the nature" of Members' practice and the insurance is to cover all the legal services Members supply to the public (rC76 (1)).

For the 2024/25 policy year a total of 4,328 Members purchased limits of cover above the Bar Mutual limit of £2.5m ("**Top Up Cover**"). The 4,328 is approximately 58% of the 7,434 Members (including BSB approved entities) who bought a limit of cover of £2.5m.

The premium paid for Top Up Cover has to date failed to build a wholly stable market. From the April 2020 renewal, what had been two Top Up Cover facilities shrank to one. The facility offered by the brokers TLO Risk Services Ltd emerged as the sole provider of Top Up Cover to the self-employed Bar. The TLO facility is supported by market insurers, and it offers a limit of insurance of up to £150m.

Unfortunately, in recent years the quantum of claims made against Barristers has been increasing, with an increase in the frequency and severity of claims involving the Top Up Cover. The 2024/25 financial year saw two notifications on earlier years where the quantum exceeded £150m. As Members will know, the policy provided by Bar Mutual is a "claims made" policy (as is the policy provided by the Top Up Cover). The relevant limit of indemnity is the limit in place when the claim (or circumstance) is first notified, and thus it may not necessarily be the limit in place at the time the work being impugned was done. Accordingly, the limit of cover purchased will need to be sufficient to meet claims notified during the currency of the policy year and for claims made in that year but relating to work done in earlier years.

Given the need for adequate insurance, my predecessors and I have for some time been urging all Members whose practices give rise to the risk of claims exceeding £2.5m, or have done so in the past, to consider purchasing Top-Up Cover by completing the relevant section of the Bar Mutual renewal form. I do so again this year. Completion of this section of the renewal form will authorise Bar Mutual to communicate to TLO the information TLO requires to produce a quote for insurance in the layers above £2.5m. I repeat the point I made last year, which is that Bar Mutual (and its Managers) have no commercial relationship with TLO of any kind.

In addition to my usual plea that Members should take out sufficient excess cover to protect themselves from facing claims that they have to pay themselves, I want to emphasise this year that it is in the interests of all Members to consider supporting the TLO facility so as to increase the prospects of Top-Up cover continuing to be available to all Members in future years, at reasonable rates.

The Board

In my time as a Director of Bar Mutual, both before and since my appointment as Chair of the Board, it has been my privilege to work with an array of very able and very committed Directors.

Our alumni include those who are and continue to be leaders in their practice areas and some of our colleagues have left us to take up judicial appointments.

In the latter part of 2024 we saw the departure of Nathaniel Rudolf KC from the Board, his departure having been preceded by the resignation from the Board of Tom Coghlin KC and Steven Snowden KC. In my year-end report I noted Steven's contribution to Bar Mutual and thanked him for all his work. Tom joined the Board in 2017 and in his time on the Board he has provided invaluable input to the work of the Rules and Cover Committee, the Audit and Risk Committee and especially the Nominations Committee.

Nathaniel (now His Honour Judge Rudolf KC) joined the Board in 2019 and served on the Audit and Risk, the Claims and the Reserves Committee. During the Covid-19 pandemic and at the time of the industrial action taken by the Criminal Bar Association, it was hugely beneficial for the Board in appreciating the challenges faced by the Criminal Bar to have a voice from that section of the profession on the Board.

I mentioned last year that the demands of being a director of a regulated insurance company were not insignificant. Therefore, on behalf of the Board and the Members, I record my deep gratitude to Tom, Nathaniel and Steven for their indefatigable commitment and enthusiasm to ensuring the success of Bar Mutual, and to wish them all the very best in the next state of their respective careers.

To replace the departed Directors, and planning for the departure of additional Directors in the course of 2025 because of tenure limits, the Board agreed the appointment of five new Directors who will take office in 2025. The five are listed below:

<i>Director</i>	<i>Practice Area</i>	<i>Location</i>
Joanne Box	Commercial	London
Sarah Crowther KC	Personal Injury	London
William Douglas-Jones	Criminal	Birmingham
Daniel Oudkerk KC	Employment	London
Eleanor Temple KC	Commercial	Manchester

With enormous pleasure, on behalf of the Members and the Board, I welcome all five new Directors to the Board of Bar Mutual.

Rebecca Sabben-Clare KC
Chair
January 2025