CHAIR'S INTERIM REPORT – JANUARY 2024

I am pleased to report that Bar Mutual Indemnity Fund Limited ("Bar Mutual") continues to operate from a strong financial base. This is despite having to weather recent deteriorations in the claims on some of its early policy years (the 2015/16 and 2017/18 policy years), increases in reinsurance premiums and a slow recovery in returns generated by Bar Mutual's investments.

In common with many organisations Bar Mutual has had to absorb an increase in its costs base, caused mostly by the upward trajectory in the rate of inflation and the need to replace an aged IT system. Inflation has resulted in an increase in the fee Bar Mutual pays to its Managers, Thomas Miller Professional Indemnity Limited ("TMPIL"); and the Mutual has also had to incur a one-off cost to replace its IT systems. The current IT system served Bar Mutual well for over 20 years, but given its age and the rate of technological advances in the interim, it has become necessary to replace it.

In this Interim Report, my second to the Members of Bar Mutual in my capacity as Chair of Bar Mutual's Board of Directors, I report on the factors impacting the premium Bar Mutual will be charging Members for the 2024/25 policy year, the increase in operating costs, an important amendment to the terms of cover, the purchase of insurance above the limit of cover provided by Bar Mutual and, finally, the composition of the Board.

The 2024/25 Policy Year Renewal

Areas of Practice

At its December 2023 meeting the Board completed its annual review of the considerations that determine the premiums Members will pay when they renew their insurance policies with Bar Mutual in the following year. It is an exercise the Board carries out every December, and it is assisted in this task by reports from the Reserves Committee (which reviews Bar Mutual's claims reserves and its capital position) and the Rating and Reinsurance Committee (which recommends to the Board the rates to be applied for the next policy year).

The rates Bar Mutual sets are intended to reflect the risk each area of practice presents to the Mutual and to fairly allocate the operating and reinsurance costs across the membership. As Bar Mutual was set up and is run solely for the benefit of its Members, the guiding principle is to target a combined ratio of 100%, i.e. the target premium income should match the sum of the forecast operational costs, reinsurance costs and claims costs for the year. As a consequence of this approach Bar Mutual does not ordinarily aim to generate an underwriting surplus.

For the 2024/25 policy year there are increases to the rates charged for 6 areas of practice and a reduction for 1 area of practice. In each case, the changes reflect movement in the claims experience in that area of practice.

The following areas of practice will see an increase in their rates.

Area of Practice	*Rate for 2023/24*	*Rate for 2024/25*
Crime	0.35%	0.40%
Chancery: Contentious	1.60%	1.75%
Defamation	2.00%	2.25%
Immigration	0.35%	0.50%
Professional Negligence	2.00%	2.10%
Revenue: Non-Crown: Contentious	0.60%	0.75%

The rate for Construction has been reduced from 0.50 per cent to 0.40 per cent.

The Income Cap

From its inception Bar Mutual has applied a cut-off to the income it takes into consideration for the purposes of calculating the premium paid by its Members. Since the 2017/18 policy year an income cap of £1.2m has been applied. The result is that, when calculating the annual premium a Member paid to Bar Mutual, the rating schedule would only be applied to £1.2m of the fee income a Member declared to Bar Mutual. Fee income above this sum (the £1.2m) operated as a cap, and fee income above the cap was ignored for the purpose of calculating the premium a Member paid to Bar Mutual. Because there has been no increase in the cap for the last 7 policy years, and given the level of fee inflation since 2017, the Board has increased the annual cap from £1.2m to £1.5m for the 2024/25 policy year renewal.

The Minimum Premium

The minimum premium was increased last year to £165 including insurance premium tax (“IPT”). As some of the forecast fixed costs for the 2024/25 policy year have reduced, the minimum premium has in turn been lowered to £155 inclusive of IPT for the 2024/25 policy year. This reduction in minimum premium means that those Members of Bar Mutual with the lowest fee income will see their premiums reduce this year.

Premium Deferral

As was often noted in the reports of my predecessors as Chair of Bar Mutual, the Mutual’s ability to continue meeting its founding principles of providing stability and security to the self-employed Bar can only be cemented if, as an insurance company, it sits on a solid financial base.

Bar Mutual is fortunate in that it continues to be in a strong financial position. As at the end of 2023 it had total assets of £84m. Accounting for its total liabilities (including claims) it held net assets of £35m. I mention two additional measures of Bar Mutual’s financial position. The first is its regulatory position. Because Bar Mutual is a regulated insurance company, the Prudential Regulation Authority requires it to hold a minimum level of capital - the Solvency Capital Requirement (“SCR”). Bar Mutual’s forecast Tier 1 regulatory capital (the assets held in excess of Bar Mutual’s liabilities as assessed on a regulatory basis) is forecast to be £40.939m as at 31 March 2024 against a forecast SCR of £27.033m. The resulting ratio of regulatory capital to SCR is 151%, which increases to 187.7% when Tier 2 capital (some part of the premium deferral on open policy years) is taken into account.

The second measure of Bar Mutual’s financial position is the Board’s risk appetite for capital. In order to ensure that the Mutual is continuously well capitalised, the Board has agreed a risk appetite for capital that results in an additional buffer above the SCR. This additional buffer is intended to ensure that Bar Mutual can weather the storms that periodically trouble insurers. This includes events such as unusually high incidences of claims in a policy year or years; or an unexpected fall in the value of Bar Mutual's investments. This risk appetite requires Bar Mutual to maintain Tier 1 capital between a lower and upper target level. The forecast to 31 March 2024 is that Bar Mutual's capital will be positioned £2.4m above its lower target and £9m below its upper target – so somewhere in the lower half of the risk appetite capital corridor.

As the level of Bar Mutual's capital is closer to the lower target than the upper target, the Board judged it imprudent to offer any premium deferral for the 2024/25 renewal. Rather, Bar Mutual should continue nudging its capital position upwards within its risk appetite corridor and so no premium deferral will apply to the 2024/25 policy year renewal.

The Board also concluded that Bar Mutual should not waive its entitlement to the premium deferral for the 2017/18 policy year (£4.886m). In making this decision it was influenced by a late deterioration in the claims position of some of the older policy years. However, the expectation is that when the Board next considers the rates (in December 2024), it will be possible to waive entitlement to the premium deferral for the 2017/18 and the 2018/19 policy years.

Operating Costs

The day-to-day performance of all the functions required to operate Bar Mutual as a regulated insurance company are outsourced to our Managers, TMPIL. The services provided by TMPIL include completing the renewals, handling claims, governance, accounting, actuarial, company secretarial, regulatory and compliance. Our Managers also provide Bar Mutual with investment management services. Bar Mutual pays an annual single management fee for all these services.

This year has seen an increase in the management fee together with a one-off increase in the charge for IT costs.

Dealing first with the management fee, in common with many service providers, TMPIL has experienced an increase in its costs base driven primarily by the climb in the rate of inflation. CPI inflation started to rise in 2021 touching 11 per cent in 2022. In 2022 the management fee for 2022/23 was held at its previous level and so there was no increase in the management fee for the 2022/23 financial year. This year TMPIL requested an increase in its fee. Its principal reason for doing so was to meet the salary inflation it had experienced. The request for an increase in the fee was considered by the Management Fee and Oversight Committee. In interrogating the request for an increased fee, the Committee had regard to (a) the report on performance made to it by other committees of the Board; (b) a salary benchmarking exercise submitted to it by TMPIL based on the input of parties independent of TMPIL; (c) the management fee paid to TMPIL's closest competitor as a provider of mutual management services; and finally (d) an external audit of TMPIL's management fee carried out by BDO LLP. On the recommendation of the Management Fee and Oversight Committee the Board agreed a 14% increase in the fee paid to TMPIL to £3.5m.

As to the IT costs, the increased cost arises from a project launched in early 2023 to modernise Bar Mutual's IT systems. The one-off cost is £990,900 plus VAT, which has been allocated roughly equally between the 2022/23 and 2023/24 financial years.

Terms of Cover

The terms of cover Bar Mutual are reviewed regularly by the Board, to ensure that they are functioning clearly and properly, in the interests of our Members. In recent years the Directors on the Rules and Cover Committee considered that the basis on which the indemnity for the costs of defending Disciplinary Proceedings was provided could sometimes prove problematic. In particular, and in order to ensure that Bar Mutual was not acting as a legal expenses insurer in respect of this element of the cover it provides, there was a requirement in the terms of cover for the Disciplinary Proceedings for which cover from Bar Mutual was sought to (a) be capable of giving rise to a claim for civil damages or civil compensation and, of relevance to the amendment that has been introduced, (b) that the claim for civil damages or civil compensation had to be continuing and unresolved for a Member to qualify for cover. Given Bar Mutual's experience of notifications involving Disciplinary Proceedings, the Board has now amended Bar Mutual's terms of cover to remove the requirement that the claim for damages or compensation should at all times be live. So where a Member qualifies for an indemnity in respect of Disciplinary Proceedings at the outset, the indemnity will not be withdrawn if parallel proceedings seeking compensation or damages come to an end.

The Bar Mutual Limit of Insurance and Top Up Insurance

The maximum limit of cover provided by Bar Mutual is £2.5m. The Basic Premium paid by some Members produces a limit of cover below £2.5m. Where the Basic Premium results in a limit of cover below £2.5m, Members have the option of increasing their limit of cover to the maximum sum provided by Bar Mutual. In all cases (subject to one or two exceptions set out in the terms of cover) defence costs are in addition to the limit of cover purchased by a Member.

Here I repeat (with no apology) what I said last year, and what each of my predecessors have said before. The policy Members purchase from Bar Mutual is a claims made one. Thus, the level of cover purchased will need to be sufficient to meet claims notified during the currency of the policy year and, critically, it will also need to be adequate to cover claims that may arise from work done in earlier years. This is especially relevant to Members who are winding-down their practices in preparation for or who are in retirement; or who are changing careers or taking a break from practice. I urge all Members to ensure that the limit of cover they purchase is sufficient to meet current and past potential claims.

Insurance above the £2.5m limit of cover ("Top-Up Cover") is available through TLO Risk Services Ltd, now the sole provider of this cover to the self-employed Bar. The Top-Up Cover also operates on a claims made basis.

In my Interim Report last year I urged all Members whose practices raised the risk of claims exceeding £2.5m 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 require to produce a quote for insurance in the layers above £2.5m. Approximately one-third of Bar Mutual's Members who buy the £2.5m maximum limit of cover offered by Bar Mutual also buy Top Up Cover. This strikes me as a remarkably small number. And in the interest of clarity Bar Mutual (and its Managers) have no commercial relationship with TLO of any kind.

The Board

Bar Mutual is an unusual insurance company. It is a mutual endeavour. It was established to meet the insurance needs of the self-employed Bar and, save for two executive Directors (a regulatory requirement), its Board is composed exclusively of self-employed barristers. Each Director has a thriving practice (which is partly why they are elected as Directors by the membership). As Chair of the Board, and despite the demands of their respective practices, I see at first hand the inexhaustible contribution each Director makes to Bar Mutual, and their obvious commitment to the success of the Company. For their unremunerated labour I must, on my behalf and on behalf of the Members, record our profound gratitude to all of Bar Mutual's non-executive Directors.

This year we say goodbye to Sharif Shivji KC. Our corporate governance rules mean that his tenure expired in early 2024. Sharif joined the Board in January 2012, and as a Director he has been a member of the Investment Committee, the Nominations Committee, the Management Fee and Oversight Committee (as Deputy Chair) and the Reserves Committee (as Chair). The value of his input, especially on the Investment Committee and Reserves Committee, has been inestimable and his contributions to Bar Mutual will be greatly missed. I thank him on behalf of the Board and the membership and wish him the best in his practice, and as the new Chair of Advocate.

At the same time, we welcome three new Directors to the Board. We are fortunate to have recruited Peter MacDonald Eggers KC, who will fortify the insurance expertise available to the Board. We have also appointed two Directors from the junior Bar, Anthony Pavlovich and Carleen Sobczyk. Their experience spans investments and numerous tributaries of commercial law. I look forward to the contribution to the work of Bar Mutual each of these Directors will make.

Rebecca Sabben-Clare KC
Chair
January 2024