

## CHAIRMAN'S INTERIM REPORT JANUARY 2011

### Adequacy of Insurance Cover

In my January 2009 interim report to Members, when urging Members to consider carefully the adequacy of the level of their insurance cover, I warned that the low level of take-up of excess layer insurance above the Bar Mutual layer of £2.5m meant there was a substantial chance that a Member would face a personal financial disaster as a result of being under-insured. A recent case in which a personal contribution was required from a Member who had no excess layer insurance highlights how important it is for Members to obtain financial security and peace of mind by taking out adequate excess layer insurance cover.

In the circumstances, I do not apologise for repeating my exhortation from 2009 (and previous years) about the need for Members to consider carefully the adequacy of the level of insurance cover, whether within the Bar Mutual primary layer of £2.5m or in excess of it, they purchase. Bar Mutual has worked with the commercial insurance market to secure readily accessible and affordable excess layer cover of up to £125m per claim. I urge all Members with a practice of any substance to tick the relevant boxes on the renewal of cover form they will soon receive in order to authorise Bar Mutual to provide excess layer brokers with your renewal form and claims history so that those brokers can obtain excess layer cover quotations.

### The Legal Services Act 2007

I reported in February last year that the Directors had established a sub-committee to examine the potential impact of the Act and decisions taken by the Bar Standards Board on Bar Mutual and how it should respond to the insurance needs of the new entities through which barristers will soon be allowed to provide legal services to the public.

In its response to the BSB's recent consultation paper on entity regulation, Bar Mutual has confirmed its intention to continue to provide high quality and fairly priced insurance cover to all entities and self-employed barristers regulated by the BSB. The response also drew the BSB's attention to the importance to both the profession and the public at large of stability and continuity in the provision of professional indemnity insurance, something that Bar Mutual is able to guarantee but which the commercial market cannot, and the need to think very carefully before making regulatory decisions that may endanger (even unintentionally) the fortunes of a very successful mutual insurance scheme that is the envy of other professions.

The second development heralded by the Act is the arrival of the Legal Ombudsman, which began to receive complaints about the quality of service provided by lawyers in early October 2010. This is both an opportunity and a challenge for Bar Mutual. The increased importance of the sensitive and efficient complaints handling, backed by potential sanction by the LeO, should encourage all Members to examine how they provide their services to the public, while the LeO will provide an inexpensive forum for the resolution of lower-value complaints.

On the other hand, Members will be aware that the Ombudsmen are not required to apply the law when determining complaints, a position that is likely to lead to an increased incidence of claim payments on low-quantum notifications. For this reason, I remind all Members that they should treat a complaint received under their chambers complaints procedure as a notifiable circumstance under the Terms of Cover and contact the Managers as soon as possible.

## **Ratings for the 2011 Renewal**

The Board is satisfied that the rates for most areas of practice should not be changed for the forthcoming 2011-2012 policy year renewal and that the deferred element of Members' premiums should remain at 12.5%.

The Planning rate has been increased from 0.5% to 0.7% to reflect the fact the total claims paid for this area of practice now exceed the total premium income received from it.

The Board has also further refined the ratings for Revenue work. In recent years Bar Mutual has incurred substantial adverse claims experience arising out of tax planning advice given to individual taxpayer clients and/or approving the tax aspects of marketed tax avoidance schemes at the request of the promoters of those schemes. Separate ratings for Revenue work undertaken on instruction by the Crown, for contentious advice and advocacy on behalf of taxpayer clients in dispute with the Revenue and, finally, for advice and drafting relating to tax planning and mitigation have been created as steps in an ongoing process aimed at ensuring that those Members whose practices pose a greater claims risk to Bar Mutual pay a premium commensurate with that risk and are not subsidised by other Revenue practitioners and Members as a whole.

The body of renewal and claims information now available to the Board has allowed it to reduce the rates for Revenue (Crown) and Revenue (Non-Crown: Contentious) from 0.9% to 0.5% and 3.5% to 2.0% respectively. Continued deterioration in the cost of Revenue (Non-Crown: Non-Contentious) work to Bar Mutual, however, has forced the Board to increase its rate from 4.5% to 5.5%. It hopes to work with the Revenue Bar Association during 2011 to identify ways to reduce the extent to which the cost of providing Bar Mutual cover to Members whose revenue practice is non-contentious is subsidised by those whose practice lies elsewhere. To this end, all Members who declare fee income in either of the Revenue: Non-Crown areas of practice will be required as a condition of inception of cover to complete and return a questionnaire about their work in this field.

## **Directors**

As foreshadowed in my report in June, the Board has moved to strengthen its membership. Stephen Arthur, Gregory Denton-Cox, Charles Flint QC, Leigh-Ann Mulcahy QC and Rajeev Shetty have all accepted invitations to become Directors since the Annual General Meeting.

Justin Fenwick QC  
Chairman  
January 2011