

CHAIRMAN'S INTERIM REPORT

JANUARY 2016

Introduction

2015 was an unusually busy year for Bar Mutual's Board of Directors. An enormous amount of work has been undertaken preparing for the introduction of Solvency II, the new regulatory regime for insurance companies within the European Union, in 2016. As most of this work has been discharged by the Audit and Risk Committee, it behoves me to record the Board's gratitude to that Committee, chaired by Christopher Symons QC, for the considerable amount of work it has completed in preparing Bar Mutual for the introduction of the new regulatory requirements.

In last year's Interim Report I covered at length the implications of the Bar Standards Board's ("BSB") authorisation and regulation of entities – organisations formed by barristers and/or other lawyers ("entities") providing legal services materially identical to those provided by the self-employed Bar. As at December 2015, nine months after the BSB began authorising entities, a total of 39 had been authorised. Later in this Report, I report on developments on this front, together with the Legal Services Board's ("LSB") potential focus on the reciprocal obligation of self-employed barristers to self-insure with Bar Mutual and of Bar Mutual to insure them.

Solvency II

In preparing for the introduction of Solvency II, work has focused on three areas: ensuring that Bar Mutual holds enough capital to meet its regulatory capital requirement; updating Bar Mutual's internal governance and supervision; and, finally, ensuring that Bar Mutual has the infrastructure to discharge its enhanced reporting and disclosure requirements.

As with any insurer, the need to have sufficient funds to pay claims plus a margin of safety is a critical requirement. I am pleased to report that Bar Mutual's capital resources exceed its Solvency II regulatory capital requirement by a comfortable, but not excessive, margin.

The Insurance of Entities

Well in advance of the approval by the BSB of its first entity in early 2015, Bar Mutual had articulated its position on the insurance of these bodies in responses to several BSB consultations: all single person entities regulated by the BSB should be obliged to self-insure their primary layer of professional indemnity insurance through Bar Mutual, as has been the case for self-employed barristers since 1988.

Bar Mutual wished to approach the insurance of multi-person entities cautiously, because of the possibility that the risks they presented might not be compatible with those presented by the self-employed Bar. Accordingly, the Board decided Bar Mutual should insure multi-person entities on a case by case basis, with a view to moving towards insuring all such entities once the nature of the work undertaken by them had become clearer and the claims risks were better understood.

On the understanding that the BSB would endeavour to secure the approval of the LSB to an amendment of Rule C77 of the BSB Handbook (the rule containing the requirement to self-insure with Bar Mutual) in time for Bar Mutual's 2016-2017 policy year, Bar Mutual agreed to insure all single person entities authorised to practise by the BSB for the 2015-2016 policy year. Bar Mutual also agreed to consider insuring multi-person entities, but gave no commitment that all such entities would be offered cover.

Regrettably, the BSB's attempts to secure permission to amend Rule C77 are taking longer than had been anticipated, its discussions with the LSB now being unlikely to conclude before late 2016, which is well beyond the renewal date for Bar Mutual's forthcoming 2016-2017 policy year. The BSB therefore requested that Bar Mutual continue insuring entities it regulates on the existing terms for another year, which Bar Mutual has agreed to do. However, this arrangement is only in place for the 2016-2017 policy year. Bar Mutual has expressly reserved its position for the 2017-2018 policy year in the event that the BSB is unable to obtain approval for the required rule change during 2016.

Allied to these matters (and a further example of how 2015 was a busy year), another issue occupying the attention of the Board and the Managers (and which will almost certainly continue to do so during 2016) was the ramifications of a section in the LSB's Business Plan for 2015-2016, where it announced that, as one of its tasks for the year, it would be analysing

"...the regulatory requirements that restrict individual and entity choice of insurer. We will aim to identify the potential positive or negative cost of such restrictions and the impact of removing them. We will also consider whether the restrictions identified are consistent with general competition law, the regulatory objectives and better regulation principles."

As Rule C77 requires all self-employed barristers to self-insure (via Bar Mutual) for the primary layer of professional indemnity insurance of £2.5m, it plainly falls within the scope of the LSB's current review.

The current insurance arrangements for the self-employed Bar and Bar Mutual were conceived by the Bar Council in 1987 to deal with an acute market failure in the provision of professional indemnity insurance to the self-employed Bar. For almost three decades now, these arrangements (and Bar Mutual's pivotal role in them) have benefitted both the self-employed Bar and its clients. Enumerating all these benefits would lengthen this Interim Report unnecessarily, so I mention only a few.

For self-employed barristers, it has provided inexpensive, transparently-priced insurance on generous policy terms from an insurance company that will always meet meritorious claims against them. And for consumers, the guaranteed availability of Bar Mutual cover has served to enhance competition in the provision of legal services by the self-employed Bar. No self-employed barristers authorised to practise by the BSB find that they cannot do so because insurers are unwilling to provide them with insurance, or to do so at an affordable price. Clients of the self-employed Bar have also never had to worry about the risk of insurer insolvency.

Rates for the 2016 Renewal

Subject to three exceptions, the Board has decided to maintain the rates for all areas of practice at the same level as for the current policy year. The exceptions are the rating for Personal Injury, which will fall from 1.5% to 1.2%, and the ratings for Chancery: Contentious and Chancery: Non-Contentious work, both of which will be reduced from 2.0% to 1.8%.

Given Bar Mutual's current financial strength (which is mainly attributable to the strong performance of its investment portfolio during the year to 31 March 2015 and an improvement in the claims position during 2015), the Board has also decided to increase the level of the premium deferral from 17.5% to 20%. As I noted in my June 2015 Report, the premium deferral is one method by which Bar Mutual reduces the cost of Members' insurance. Bar Mutual has never needed to demand payment of any part of any policy year's premium deferral, a step that would only be taken if there were a sudden and substantial deterioration in its financial strength.

The Board has adopted a practice of waiving entitlement to demand payment of the deferred premium once the outcome of a policy year has settled. In line with this practice, the Board has recently decided to waive the right to request payment of the premium deferral for the 2009-2010 policy year (a total of £1.9m). It is worth noting that since the premium deferral was first introduced for the 1999-2000 policy year, Members have collectively saved approximately £17m in waived premium.

Finally, I should explain that, in order to ensure that the self-employed Bar and entities are treated identically for underwriting purposes, we have had to revise the method for rating new Members. Both self-employed barristers and entities will now be required to provide projected fee income receipts for the unexpired portion of the policy year in which they first apply to become a Member of Bar Mutual. Where the projected receipts are £50,000 or less, the minimum premium will be charged. Where the projected receipts exceed £50,000, however, the premium will be the lower of (i) the minimum premium for the limit of cover requested plus an additional component calculated in accordance with the Rating Schedule on the fee receipts in excess of £50,000 or (ii) the premium calculated on the total projected fee receipts in accordance with the Rating Schedule, subject always to the minimum premium.

Colin Edelman QC
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