

Bar Mutual Cover and Secondments – Guidance Note

Bar Mutual is aware that an increasingly common aspect of the practices of Members who practise as self-employed barristers is the undertaking of secondments with clients (lay and professional) of chambers. The benefits of these arrangements for both sides are self-evident and Bar Mutual does not wish to disrupt them unnecessarily.

As a result, the Managers have begun to receive a growing number of enquiries on whether Bar Mutual cover would respond to a claim against a Member arising from work performed as part of the secondment.

While each enquiry of this kind will turn on its own specific details, the following guidance is intended to assist Members and their clerks who are uncertain about their position:

- Bar Mutual provides professional indemnity insurance cover for claims for compensatory damages arising from Members' activities in providing legal services to the public as part of their practice as *self-employed* barristers;
- The key insurance issue surrounding secondments is whether the activities undertaken by a Member as a part of the secondment, and the circumstances in which they are undertaken, can truly be regarded as part and parcel of practice as a *self-employed* barrister;
- Bar Mutual will have regard to the manner in which the Member is being paid for work done while on secondment. Any Member who is being paid a salary from which PAYE has been deducted will not be regarded as working on a self-employed basis and will thus not be covered if a claim is made arising from the work so remunerated;
- However, and although this will not be conclusive in itself, the fact that the Member's clerk is rendering periodic fee notes may be good evidence that the Member should be treated as acting as a self-employed barrister, not as an employed barrister;
- Where, however, a Member is advising or dealing directly with clients or customers of the secondee organisation and would be regarded as being held out to them as a representative of that organisation, this is likely to indicate that the Member is working as an employed barrister. Bar Mutual cover would not be available for a claim against the Member in respect of his or her acts and/or omissions in these circumstances, whether by the clients or customers or the organisation itself;
- Members and their clerks should take great care when agreeing the terms of any secondment in order to ensure that the insurance position is clear and the risk of a Member being left without any cover from any source is eliminated;
- Bar Mutual appreciates that no two secondment arrangements are likely to be identical. If Members and their clerks still have concerns about the cover position after reading this guidance, they should contact the Managers by emailing info@barmutual.co.uk or calling 020 7621 0405.