

BAR MUTUAL

**BAR MUTUAL
INDEMNITY
FUND LTD**

RULES

| (2017⁵ Edition)

BAR MUTUAL

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[Effective on and from 0000 hours ~~British Summer~~~~Greenwich Mean~~ Time on ~~1 April~~
~~2015~~ October 2017]

NOTE: These Rules were adopted in accordance with the powers conferred by the Articles of Association of Bar Mutual Indemnity Fund Ltd.

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1. MEMBERSHIP OF BAR MUTUAL

- 1.1 Every Self-Employed Barrister shall be entitled to become a Member of Bar Mutual for so long as Bar Mutual shall provide insurance to the self-employed Bar as a whole. Application for membership shall be in writing and supported by such information as Bar Mutual may require. Bar Mutual may refuse to accept any application for membership which does not in its judgement fall within or comply with this Rule.
- 1.2 An Entity [or Free Legal Advice Centre](#) that wishes to become a Member of Bar Mutual shall apply for membership in writing, supported by such information as Bar Mutual may require. Bar Mutual shall be entitled in its discretion to accept or refuse any such application or to accept any application subject to terms and conditions notified to the Entity. In the event of a refusal or an acceptance subject to terms and conditions, Bar Mutual shall, if requested, give reasons for its decision.
- 1.3 A Registered European Lawyer who wishes to become a Member of Bar Mutual shall apply for membership in writing, supported by such information as Bar Mutual may require. Bar Mutual shall be entitled in its discretion to accept or refuse any such application or to accept any application subject to terms and conditions notified to the Registered European Lawyer. In the event of a refusal or an acceptance subject to terms and conditions, Bar Mutual shall, if requested, give reasons for its decision.
- 1.4 A Member or prospective Member of Bar Mutual whose practice in England and Wales or in the Courts of the European Union forms or will form a substantial part of his occupation and who wishes his practice as a Foreign Lawyer and/or a European Lawyer to be insured by Bar Mutual may apply for such cover in writing, supported by such information as Bar Mutual may require. Bar Mutual shall be entitled in its discretion to accept or refuse any such application or to accept such application subject to terms and conditions notified to the Member or prospective Member. In the event of a refusal or an acceptance subject to terms or conditions, Bar Mutual shall, if requested, give reasons for its decision.
- 1.5 Any person aggrieved by any decision by Bar Mutual under Rules 1.1, 1.2, 1.3 and 1.4 may appeal to the Chairman of the Bar Council, by whose decision Bar Mutual will be bound.
- 1.6 Membership of Bar Mutual is upon the terms of these Rules and the Terms of Cover (which shall together constitute the terms of the contract between Bar Mutual and every Member) as are in force at the time of the commencement of membership and as may subsequently be amended from time to time (whether by addition, deletion, variation or substitution) in accordance with the Articles and/or these Rules.
- 1.7 A Self-Employed Barrister's Membership of Bar Mutual shall continue indefinitely without right of withdrawal or termination on either side, except only as provided by Rules 1.8 and 1.9. In any other case, membership of Bar Mutual shall be terminable by either party at each date of renewal of cover.
- 1.8 The membership of Bar Mutual of any Self-Employed Barrister, Entity or Registered European Lawyer shall cease 12 months after their respective practices cease for any reason (save that a Registered European Lawyer

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who ceases to practise as a Registered European Lawyer by virtue of becoming a Self-Employed Barrister shall continue to be a Member until 12 months after he ceases to practise as a Self-Employed Barrister), without prejudice to any liability under Rule 3 for:

- (a) any Basic, Supplementary, Optional and Additional Contributions due from him (whether before or after his membership ceases) in respect of any Period of Insurance during which he was a Member, and
- (b) any Cessation Contribution due from him (whether before or after his membership ceases) on or after cessation of his practice.

1.9 Bar Mutual may cease to provide insurance to Members as a whole:

- (a) by giving notice to the BSB within 28 days after any amendment of the BSB Handbook repealing the requirement that all Self-Employed Barristers be insured with Bar Mutual against claims for civil liability, such notice to have effect from the same date as such repeal has effect or the date (if later) specified in such notice; or
- (b) at any time by giving not less than six months' notice to the BSB.

1.10 For the avoidance of any possible doubt, nothing in these Rules is intended to or does derogate in any way from the professional duty of a Self-Employed Barrister or an Entity. Notwithstanding membership of Bar Mutual, a Member shall be free at any time to act for a client suing or being sued by another Member. In such circumstances, the interest of the client shall at all times be paramount over the interests of Bar Mutual.

2. PROFESSIONAL INDEMNITY INSURANCE

2.1 Active Members

2.1.1 Bar Mutual will provide professional indemnity insurance to every Member, irrespective of whether the Member has complied with the provisions of Rules 3 and 4.

2.1.2 The insurance will be provided from year to year (commencing 1st April or such other date as the Directors may determine) or by reference to such other Periods of Insurance as the Directors may determine, for so long as a Self-Employed Barrister continues in independent practice or a Registered European Lawyer or Entity continues to be a Member of Bar Mutual.

2.1.3 The insurance will be provided in consideration of the payment of the Basic and Supplementary and (where applicable) Optional and Additional Contributions payable under Rule 3.

2.1.4 The insurance will be provided by the issue to or in respect of the Member of a Cover Note for the relevant Period of Insurance.

2.1.5 The insurance provided to Members shall be on such terms as may be contained in the Terms of Cover as approved or amended by the Directors from time to time. [The Limit of Cover available to a barrister who is not otherwise a Member of Bar Mutual but who is providing Legal Services \(as defined in the Terms of Cover from time to time\) through a Free Legal Advice](#)

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[Centre shall be limited to £500,000.00](#)

2.2 Retired Barristers

2.2.1 When any Member who is a Self-Employed Barrister or Registered European Lawyer ceases to practise (whether because of death, retirement, appointment or any other reason other than the Member continuing to practise through or on behalf of an Entity), and provided that Bar Mutual is continuing to provide insurance to Members as a whole, Bar Mutual will provide run-off professional indemnity insurance in accordance with this Rule.

2.2.2 The run-off insurance will be provided to cover claims which were neither made nor deemed to be made prior to the Member ceasing to practise but which may be made at any time in the future or during such lesser period as the Directors may determine. The Limit of Cover (as defined in the Terms of Cover from time to time) for this insurance shall be £500,000 or such higher sum as the BSB may prescribe as being the minimum limit of cover for Entities or as Bar Mutual may agree to provide at the request of the Member.

2.2.3 The run-off insurance will be provided

- (a) in the case of a Member who dies while in practice and insured under a Cover Note, without further charge;
- (b) in all other cases, in consideration of the payment of the Cessation Contribution payable under Rule 3.

2.2.4 The run-off insurance will be provided by the issue to or in respect of the Member of a Cessation Cover Note.

2.2.5 The run-off insurance provided to a Member who ceases to practise shall be on such terms as contained in the Terms of Cover as approved or amended by the Directors from time to time.

2.2.6 In the event that Bar Mutual ceases to provide insurance to the Self-employed Bar as a whole, it shall have the right to cancel any such run-off insurance with effect from the date it so ceases by arranging at its own cost and with suitable substitute insurers a suitable substitute run-off insurance in favour of the Member or his legal personal representatives.

2.3 Run-Off Insurance for Entities

2.3.1 Run-off insurance for an Entity insured by Bar Mutual shall be provided by Bar Mutual in such circumstances and to such extent as may be prescribed from time to time by the BSB, save that if Bar Mutual does provide run-off insurance it may at the request of the Entity agree to provide a higher Limit of Cover (as defined in the Terms of Cover from time to time) than that prescribed by the BSB.

2.3.2 Bar Mutual shall be entitled to require the payment of such additional Contribution as it sees fit in consideration of the provision of run-off insurance to an Entity.

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2.4 Run-off Insurance for Free Legal Advice Centres

2.4.1 Run-off insurance for a Free Legal Advice Centres insured by Bar Mutual shall be provided by Bar Mutual in such circumstances and to such extent as Bar Mutual sees fit.

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3. CONTRIBUTIONS

- 3.1 Bar Mutual shall establish and maintain by way of Contributions and its other assets and income from time to time a Fund which in the opinion of the Directors (after taking into account reinsurance) shall be appropriate to meet the claims, expenses, outgoings and reserves (whether incurred, accrued, anticipated or set aside) of Bar Mutual and of its insurance business. The Fund may be used to meet any such claims, expenses, outgoings and reserves, irrespective of whether or not all or any part of those claims, expenses, outgoings and reserves shall relate to the Period of Insurance in respect of which such Contributions are levied or to which such other assets or income may be attributable or shall relate to any Period of Insurance during which all or any of the Self-Employed Barristers, Entities or Registered European Lawyers or Free Legal Advice Centres making any such Contributions were Members.
- 3.2 The Contributions shall be levied by means of Basic Contributions, Supplementary Contributions (if the Directors so determine), Cessation Contributions, and Optional Contributions and Additional Contributions (if a barrister so chooses) in accordance with Rules 3.5, 3.6, 3.7, 3.8 and 3.9.
- 3.3 Notwithstanding the power (if the Directors so determine) to levy Supplementary Contributions in respect of any Period of Insurance or to return Contributions, Bar Mutual and the Directors in their absolute discretion may operate and maintain the Fund as a single continuous fund, and cause or allow any deficiency in respect of one Period of Insurance to be met in whole or part from Contributions in respect of another Period or Periods or any balance in respect of one Period to be applied to the benefit of any other Period or Periods.
- 3.4 Rating Schedule
- 3.4.1 In respect of each Period of Insurance the Directors shall before the commencement of that Period
- (a) determine the minimum and the maximum limits of cover to be afforded by payment of Basic Contributions; and
 - (b) prepare a Rating Schedule.
- 3.4.2 The Rating Schedule may apply different rates of Basic Contribution and afford different limits of cover (within the minimum and maximum limits so determined) to different Members or categories of Members by reference to any factors the Directors consider appropriate, including (but without limiting the foregoing) nature of practice, income, seniority and claims record. In relation to an Entity, the Directors shall be entitled to include within their consideration the nature of practice, income, seniority and claims record of each person practising through or on behalf of the Entity or any Prior Practice (as defined in the Terms of Cover from time to time) of which the Entity is the

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Successor Practice (as defined in the Terms of Cover from time to time).

3.5 Basic Contributions

3.5 Every Member shall in respect of each Period of Insurance during all or any part of which he is in practice pay to Bar Mutual a Basic Contribution calculated at the rate calculated in accordance with the Rating Schedule.

3.6 Supplementary Contributions

| 3.6.1 Except for Free Legal Advice Centres, eEvery Member shall in respect of each Period of Insurance pay such Supplementary Contributions (if any) as the Directors may at any time or times during or after the expiry of such Period of Insurance determine should be made.

3.6.2 Supplementary Contributions shall be levied as a uniform percentage of Basic and Optional Contributions and as a uniform (but not necessarily the same) percentage of Additional Contributions.

3.7 Cessation Contributions

3.7.1 Every Member shall inform Bar Mutual of the cessation of his practice no later than the date upon which he ceases to practise. Every Member shall on ceasing to practise (other than on death) pay to Bar Mutual such Cessation Contribution (if any) as the Directors may determine to be appropriate to cover any claims which were neither made nor deemed to be made prior to his ceasing to practise but which may be made in the future.

3.7.2 When a Member ceases to practise (for any reason) Bar Mutual may:

(a) release the Member at his request from all or any part of any future liability for Supplementary Contributions in respect of any Period of Insurance during which he was in practice upon such terms as the Directors may determine; or

(b) whether or not there has been any such request, assess at the date of his ceasing to practise and levy on the Member an amount representing his likely discounted future liability for any such Supplementary Contributions.

3.7.3 Subsequent to any such release or assessment and payment under Rule 3.7.2 the Member shall have no further liability for any Supplementary Contributions and no right to share in any future return of Contributions.

3.7.4 Rules 3.7.1 and 3.7.2 do not apply to a Registered European Lawyer who ceases to practise as a Registered European Lawyer by virtue of becoming a Self-employed Barrister or to a Self-Employed Barrister who ceases to practise as a Self-Employed Barrister by virtue of practising through or on behalf of an Entity.

3.8 Optional Contributions

| 3.8.1 Any Member who is not a Free Legal Advice Centre and whose Basic Contribution in respect of any Period of Insurance (calculated in accordance with the Rating Schedule) entitles him to cover of less than the maximum limit

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of cover determined under Rule 3.4.1 may increase his cover up to that maximum by paying an Optional Contribution equal in amount to the difference between the Basic Contribution payable by him and the Basic Contribution which would have been payable by him under the Rating Schedule to entitle him otherwise to such increased cover.

3.8.2 Any Supplementary Contributions levied in respect of any such Period in which increased cover has been acquired will be calculated as a percentage of the total of the Basic Contribution and of the Optional Contribution paid to acquire such increased cover.

3.9 Additional Contributions

3.9.1 Bar Mutual may make available additional cover above the maximum limit of cover determined under Rule 3.4.1 to such further limit(s) and at such rate(s) and on such terms as the Directors may determine.

3.9.2 Any Member who is in receipt of the maximum limit of cover determined under Rule 3.4.1 may purchase additional cover (if made available by Bar Mutual) by payment of the Additional Contribution determined by the Directors.

3.10 Payment of Contributions

3.10.1 Subject to Rules 3.10.2 and 3.10.3, all Contributions in respect of any Period of Insurance shall be due and payable in full on the first day of that Period of Insurance, whether or not notification under Rule 3.10.4 has been given or received.

3.10.2 Supplementary Contributions shall be due and payable upon demand.

3.10.3 Without prejudice to Rules 3.10.1 and 3.10.2, the Directors may determine that any Contributions shall be payable on other dates or by instalments.

3.10.4 Within 28 days after receipt from a Member of the information required to be supplied by Rule 4.1, the Managers will notify him of the Basic Contribution payable by him, of the date or dates and instalments by which the same is payable (if other than as in Rule 3.10.1), and of his Limit of Cover. Such notification may at the option of Bar Mutual (unless the Member expressly requires individual notification) be made either to the Member individually or to the Head of his Chambers or to such other person as the Head of Chambers may nominate.

3.10.5 No claim of any kind whatsoever against Bar Mutual shall constitute any set-off against any Contributions otherwise due to Bar Mutual or shall entitle any Member to withhold or delay payment of any such Contributions.

3.10.6 Bar Mutual may set off any Contributions or other sums due from any Member or any other person insured by Bar Mutual against any claims or other sums payable to such Member or other person by Bar Mutual.

3.10.7 Bar Mutual may, if the Directors so decide and upon such terms as they decide, waive its right to levy all or any part of any Contributions, grant discounts from Contributions for payments made before such date(s) as the

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Directors specify or return all or any part of any Contributions made to all or any of the Members making the same.

- 3.10.8 Without prejudice to the rights and remedies of Bar Mutual under any of these Rules, if any Contribution payable by any Member is not paid on or before the due date, such Member shall pay interest on the amount not so paid from and including the due date down to the date of payment at such rate as the Directors may from time to time determine.
- 3.10.9 If any Contribution due from a Member is not paid, the sums required to make good any resulting shortfall or deficiency in the funds of Bar Mutual may be treated as expenses of Bar Mutual for the purposes of Rule 3.1.
- 3.11 In the event of any Member failing to supply the Managers with the information required under Rule 4.1, Bar Mutual may in its absolute discretion assess what it reasonably believes to be an appropriate contribution to be paid by the Member. Any such Member remains liable to pay any Supplementary Contribution that the Directors determine should be made.

4. PROVISION OF INFORMATION

- 4.1 Every Member other than a Free Legal Advice Centre shall supply to the Managers by no later than any date in each calendar year that Bar Mutual may specify and in such form as Bar Mutual may require:
- (a) information as to the gross fee income received by him during the previous calendar year or (if more convenient for him) during the 12 months to the end of his last VAT period in that calendar year; and
 - (b) such other information regarding the nature of his practice, income, seniority and/or claims record and/or such other factors as the Directors may determine.
- In relation to an Entity, Bar Mutual shall be entitled to require such information to be provided in respect of each person practising or formerly practising through or on behalf of the Entity.
- 4.2 The information required under Rule 4.1 may be supplied by the Member individually or by the Head of the Chambers or by his Clerk, save that all responsibility for the accuracy of the information so supplied shall remain with the individual Member.
- 4.3 Any information so supplied shall (subject to the provisions of Rule 6) be used by the Managers for the sole purposes of:
- (a) calculating the Member's liability or potential liability for Contributions; and
 - (b) compiling and supplying to Bar Mutual and the Directors such general statistical information (not identifying any particular barrister or set of chambers) as they may require for the purpose of preparing Rating Schedules and/or determining the appropriate Contributions and/or exercising their other powers under these Rules (including supplying statistical information to the Bar Council or the BSB under Rule 6).
- 4.4 The Managers and Bar Mutual shall in no circumstances whatsoever (unless

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compelled by law) use or part with or disclose any information supplied under Rule 4.1 for any purpose or to any person or body except as provided by Rule 4.3.

- 4.5 Every Member shall inform Bar Mutual of any change of Chambers or address for correspondence no later than the date upon which he changes Chambers or his address for correspondence. All documents, notices or correspondence will be deemed to have been issued or sent to a Member if they are posted to the most recent address notified to Bar Mutual by the Member.

5. COVER NOTE

- 5.1 Subject to payment of any Basic and other Contributions due from a Member, Bar Mutual will prior to or as soon as practicable after the commencement of any Period of Insurance issue to each Member a Cover Note confirming the insurance afforded to that Member for the Period of Insurance and the applicable Limit of Cover, having regard to the Basic Contribution and (if applicable) any Optional or Additional Contribution paid or payable.
- 5.2 In relation to a Self-Employed Barrister, Bar Mutual may issue a block Cover Note to the Head of his Chambers confirming such insurance in respect of each Member identified in that block Cover Note, save that any Member shall be entitled to require Bar Mutual to issue to him an individual Cover Note.
- 5.3 Subject to payment of any Cessation and other Contributions due from him, Bar Mutual will upon any Member ceasing to practise or as soon as practicable issue to him (or his legal personal representatives) a Cessation Cover Note confirming the run-off insurance afforded to him pursuant to Rule 2.2, the Period of Insurance (in particular whether it is indefinite or for some lesser period) and the Limit of Cover applicable to him under the run-off insurance.

6. INFORMATION FOR BAR COUNCIL AND BSB

- 6.1 Confirmation of membership of Bar Mutual may be given by Bar Mutual to the Bar Council or the BSB in respect of any Member at any time and in such manner as the Directors may determine.
- 6.2 Confirmation that any Member is or is not insured with Bar Mutual and/or a copy of the relevant Cover Note may be given by Bar Mutual to the Bar Council or the BSB at any time and in such manner as the Directors may determine.
- 6.3 Bar Mutual may supply to the Bar Council or the BSB the name and details of any Member that has failed or fails to pay any Contribution due from him on or before the date specified for payment thereof.
- 6.4 If Bar Mutual avoids or purports to avoid the insurance provided in respect of any Period of Insurance and in respect of any or all of the Insured on any grounds reserved to it under the Terms of Cover as amended from time to time, it shall give immediate notice in writing thereof to the BSB and shall supply such information as it may reasonably require.

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- 6.5 Bar Mutual may supply to the Bar Council or the BSB such general statistical information (not identifying any particular Member or Chambers) as the Directors may consider to be in the general interests of the Bar to supply or as the Bar Council or the BSB may reasonably require.
- 6.6 Qualified privilege shall attach to the giving of any notice or the supply of any information hereunder to the Bar Council or the BSB.

7. DELEGATION OF POWERS

Any power, duty or discretion under these Rules or any Terms of Cover issued pursuant to them is vested in Bar Mutual or the Directors, save that they may be delegated to the Chairman, any Deputy Chairman, any committee of the Directors or to any Managers appointed in accordance with the Articles.

8. DISPUTES

- 8.1 If any difference or dispute arises between Bar Mutual and/or the Managers on the one hand and any Member on the other hand out of or in connection with these Rules (other than any difference or dispute that is referred to the Chairman of the Bar Council under Rule 1.4), the difference or dispute shall in the first instance be referred to and adjudicated upon by the Directors. The reference and adjudication shall be in writing only, unless the Directors otherwise direct, and if the dispute or difference concerns any act, omission or decision of the Managers, the Managers shall (notwithstanding Rules 4.3 and 4.4) supply to the Directors all relevant information in their possession.
- 8.2 If the Member concerned in any such difference or dispute does not accept the decision of the Directors, he must within 30 days of the date of that decision give notice in writing to the Directors that he is dissatisfied with their decision. If notice is not given within 30 days, the Directors' decision shall be final and binding and shall not be further disputed.
- 8.3 If notice is duly given under Rule 8.2, any difference or dispute concerning the liability or quantum of liability for any Contribution may at the option of Bar Mutual be, and in every other case it shall be, referred to arbitration in London before a sole arbitrator, who shall be appointed by the Chairman of the Bar Council within 30 days of the written notice being given to the Directors under Rule 8.2. The reference to arbitration and all proceedings therein shall be subject to English law.
- 8.4 No Member shall be entitled to maintain any legal proceedings whatsoever against Bar Mutual in relation to the difference or dispute unless and until it has been referred to the Directors in accordance with Rule 8.1 and they have given their decision thereon and (if such decision is not accepted by the Member) the provisions of Rules 8.2 and 8.3 have been complied with and the difference or dispute has been referred to arbitration and an award thereunder has been made and published. In respect of any dispute or difference referred to arbitration, the Member will then be entitled to maintain legal proceedings against Bar Mutual only for such sum (if any) as the award may direct to be paid by Bar Mutual, and the sole obligation of Bar Mutual to the Member under these Rules in respect of the dispute or difference shall be to pay any sum (if any) as may be directed by the award.

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8.5 Where there are two or more differences or disputes which in the opinion of the Chairman of the Bar Council may conveniently be heard together in a single arbitration, whether such differences or disputes involve the same person or several persons, or arise under one Cover Note or several Cover Notes (whether issued to the same or to different Members), or refer to the same or to different Periods of Insurance, the Chairman of the Bar Council may appoint a single arbitrator with power to hear and determine all such differences and disputes together and to make and publish a single award.

9. GOVERNING JURISDICTION AND LAW

These Rules and every application for membership of Bar Mutual shall be governed by English law and, without prejudice to the requirements of Rules 1.4 and 8, any legal proceedings shall be justiciable only in the courts of England and Wales.

10. INTERPRETATION

In these Rules (and unless the context otherwise requires) the following expressions have the following meanings:

Articles	The Articles of Association of Bar Mutual.
Bar Council	The General Council of the Bar of England and Wales.
Bar Mutual	Bar Mutual Indemnity Fund Ltd.
BSB	The Bar Standards Board.
BSB Handbook	The Bar Standards Handbook, as amended from time to time.
Chambers	The place (as notified to the BSB pursuant to the BSB Handbook) at or from which a Self-Employed Barrister carries on his practice.
Clerk	The clerk, junior clerks, and administrative and secretarial staff employed in the Chambers.
Contributions	Basic Contributions, Supplementary Contributions, Cessation Contributions, Optional Contributions and Additional Contributions, as defined in Rule 3.
Cover Note	The Cover Note issued by Bar Mutual under Rule 5 in respect of any Period of Insurance, including where the context so requires, a Cessation Cover Note under Rule 5.3, and any endorsement.
Directors	The Directors for the time being of Bar Mutual.
Entity	Any limited company, limited liability partnership or unlimited partnership regulated by the BSB.
European Lawyer	As defined in the BSB Handbook.

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Foreign Lawyer	As defined in the BSB Handbook.
Free Legal Advice Centre The Bar Pro Bono Unit and the Free Representation Unit	
Fund	The fund established and maintained from time to time pursuant to Rule 3.1.
“he”, “his”, “him”	The Member, whether a person or an Entity or a Free Legal Advice Centre (subject to the context in which those words are used).
Managers	The Managers for the time being appointed by Bar Mutual under the Articles.
Member	A person who is a member of Bar Mutual pursuant to Rule 1.
Period of Insurance	The period (all dates inclusive) specified in the Cover Note.
Rating Schedule	The rating schedule prepared pursuant to Rule 5.4.
Registered European Lawyer	A European Lawyer registered as such by the BSB and by an Inn pursuant to a direction of the JRC under Regulation 30 of the Consolidated Regulations and who supplies Legal Services from Chambers in England and Wales or as a sole practitioner in England and Wales and who (for the avoidance of any possible doubt) is not employed to supply Legal Services under a contract of employment or by virtue of an office under the Crown or in the institutions of the European Union.
Self-Employed Barrister	A barrister in independent practice, as defined by the BSB Handbook.