

CHAIRMAN'S REPORT

Financial Results

I am very pleased to report on another good year for Bar Mutual with an operating surplus of £4.182m for the financial year ended 31 March 2017, a shade below the surplus of £4.497m reported last year.

This result was achieved despite the Board targeting a £1m reduction in Bar Mutual's premium on the previous year and in the face of an increase (by £0.8m) in Bar Mutual's claims experience.

The surplus this year is attributable to the performance of Bar Mutual's investment holdings and to the underwriting outcome for the year. The funds invested generated an investment return of 3.46% resulting in a contribution of £2.459m to the results, a marked improvement on the investment return of 0.27% generated last year, whilst the underwriting activities contributed £2.145m to the results.

By far the largest risk Bar Mutual faces as an insurance company is a severe reversal in what has in recent years been a relatively benign claims experience. Our history demonstrates that, quite unexpectedly, Bar Mutual's claims experience can climb to levels that could have an impact on its financial strength were it not adequately reserved.

Accordingly, Bar Mutual has always adopted a conservative approach to its operations. This is in order to ensure that it has strong reserves that are capable of absorbing any exaggerated developments in its claims experience without future Members having to pay for the claims of their predecessors. It also helps in ensuring that Bar Mutual has time to react to any unexpected increases in its costs base (the cost of reinsurance for example), or its regulatory capital requirement, without having to take drastic unplanned measures.

At the same time, however, the Board is highly conscious of not accumulating reserves in excess of what a sensible degree of prudence requires. To this end, and as part of its Risk Appetite Statement, the Board formulated and has for some years applied a consistent policy on the amount of capital it should hold above its regulatory capital requirement to ensure that it has enough to absorb any unexpected shocks but not too much. The policy provides for a target range in excess of Bar Mutual's regulatory capital requirement, with upper and lower limits, within which Bar Mutual's free reserves should sit.

In my interim Chairman's Statement of January this year I identified several factors that were responsible for Bar Mutual's free reserves exceeding the top level of the target range. These were the relatively benign claims experience, the higher than projected investment income for the financial year and the reduction in Bar Mutual's regulatory capital requirement.

As part of its Risk Appetite Statement, where Bar Mutual's free reserves exceed the upper end of the target range set in its capital resources policy, Bar Mutual is required to manage its free reserves into the target range over a period of time. To achieve this, Bar Mutual can reduce the rates it sets for areas of practice or increase the level of premium deferral granted to Members, or it can do both. Thus, for the 2017 renewal, and without departing from its underwriting criteria for the premium rate calculation, the rates charged for several areas of practice were reduced and the premium deferral increased from 20% to 27.5%. Members will doubtless have noticed a reduction in their premiums at the 2017 renewal as a result.

Entities

One of the major projects undertaken by the Bar Council in recent years is to innovate the way in which self-employed members of the Bar can offer legal services. In 2015 the Bar Standards Board (“BSB”) secured authorisation from the Legal Services Board to approve and regulate single person and multi-person entities; and in 2016 it secured authorisation to approve and regulate alternative business structures.

As Bar Mutual endeavours to support the Bar, and because the legal services offered by BSB approved single person entities is invariably very similar to if not identical to that offered by self-employed members of the Bar, Bar Mutual agreed to treat single person entities as self-employed Barristers and so provide them with professional indemnity insurance as of right.

However, from the outset, Bar Mutual attached one condition to this arrangement, which was that the BSB should effect a change in its Handbook so as to require all single person entities to purchase their first £2.5m of professional indemnity insurance with Bar Mutual. The condition for this rule change was primarily informed by the need to ensure fairness between the self-employed Bar and single person entities.

It is unfortunately taking the BSB much longer than even it anticipated to secure the rule change. Bar Mutual has therefore had to reserve its position on whether it will continue to provide automatic insurance to single person entities at future renewals. Bar Mutual currently insures multi-person entities and alternative business structures on a discretionary basis; and in the absence of a change to the Handbook requiring all single person entities to insure with Bar Mutual, Bar Mutual will consider ceasing to insure single person entities as a matter of right and instead adopt the same approach it applies to providing insurance to multi-person entities and alternative business structures, namely doing so on a discretionary basis.

One unavoidable result of this will be an inevitable increase in the premium charged to all entities as a result of (a) the increased administrative costs in underwriting individual risks and (b) the application of a different rating schedule to entities.

Pro Bono

Bar Mutual’s Terms of Cover currently provide insurance to members of the self-employed Bar who provide pro bono legal services within the Terms of Cover.

This year Bar Mutual was approached by the current Chairman of the Bar Council, Andrew Langdon QC, for Bar Mutual to provide insurance to members of the employed Bar who provide pro bono legal services.

Given the current difficulties in obtaining access to legal advice and assistance, the Board is of the view that Bar Mutual should support this request and so a recommendation will be made to the Members at the Annual General Meeting in October for Bar Mutual to provide insurance to employed barristers providing pro bono legal services through the Bar Pro Bono Unit or the Free Representation Unit. Bar Mutual’s experience of claims arising from the provision of pro bono legal services is exceedingly benign and so it is anticipated that there will be no appreciable claims risk in extending Bar Mutual’s cover in this way.

Data Security

Whilst it is not an area that generates many claims for Bar Mutual, the safeguarding of personal data held by self-employed barristers nonetheless merits mention in my Chairman’s Statement.

The relevant statute is the Data Protection Act 1998, which sets out the legal obligations that have to be met in relation to data security. The Bar Council has also issued guidance on data security which can be found on its website.

In light of the impending introduction of the EU General Data Protection Regulation (“GDPR”) in May 2018, Members are encouraged to ensure that they understand how to minimise the risk of suffering data loss, their regulatory and legal obligations in the event of a data loss and the measures they can take to limit their exposure.

The Board

This year’s Annual General Meeting scheduled for October will coincide with the retirement of David Wolfson QC, Leigh-Ann Mulcahy QC and Charles Flint QC. Each has made an immeasurable contribution to the work of Bar Mutual.

David is the retiring Chairman of Bar Mutual’s Investment Committee. Together with the members of that Committee, which includes Charles, David led the task of developing and then implementing an investment policy that has protected and nourished Bar Mutual’s funds through very difficult and unprecedented investment conditions. I wish to record my thanks - personal and on behalf of the Board - to both David and Charles for their contribution to the work of the Investment Committee and the Board. David is succeeded in the role of Chairman of the Investment Committee by Jasbir Dhillon QC.

I am particularly grateful to Leigh-Ann for her contribution to the Legal Services Act Committee. This Committee spent many hours examining and liaising with the BSB on its proposals for approving and regulating entities, and in formulating Bar Mutual’s approach to the insurance of entities.

Bar Mutual has been fortunate in attracting the ablest of practitioners to its Board over many years and I am therefore very pleased to report that, continuing in this tradition, David Scorey QC joined the Board in the course of the year. We welcome him to the Board.

Colin Edelman QC
Chairman

Date: 24 July 2017