CHAIRMAN'S INTERIM REPORT
JANUARY 2017

Financial Position and Rates for the 2017 Renewal

As an insurance company originally established to meet the insurance needs of the self-employed Bar in England and Wales, Bar Mutual must of course ensure that it always has sufficient assets to meet its liabilities. In the past, a number of insurance companies have foundered because they held insufficient capital to sustain them through unexpectedly heavy demands on their capital.

This time last year I noted the requirement for Bar Mutual to have sufficient funds to meet its claims plus a prudent margin of safety, and that this was a critical feature of its operations. I also noted that Bar Mutual exceeded its regulatory capital solvency requirement by a comfortable but not excessive margin.

The Directors' Report and Financial Statements to 31 March 2016 reported an operating surplus of £4.497m (after tax). This was an increase of £2.8m on the previous financial year and was due primarily to a benign claims experience, a reduction in the level of the premium deferral from 20% to 17.5% for the 2015 renewal and a rise in the level of the cap above which fee income is ignored for the purposes of applying Bar Mutual's rating schedule.

Three developments in the course of the current financial year are causing Bar Mutual's finances to continue to develop favourably. The first two are the continuing improvement in Bar Mutual's claims experience and increased investment income. Together, these developments are projected to produce an operating surplus to 31 March 2017 of £4.541m.

The third development is an unexpected but favourable change in the calculation of Bar Mutual's regulatory capital. Because of an improvement in Bar Mutual's reinsurance programme and a de-risking of its investment holdings in advance of and continuing after the Brexit referendum, the amount of capital Bar Mutual is required to hold under the regulatory capital rules set by the Prudential Regulatory Authority has reduced. The Board has formulated a Capital Resources Policy, a policy intended to ensure that Bar Mutual holds neither insufficient nor excessive capital. The combination of operating surplus and reduction in Bar Mutual's regulatory capital requirements has resulted in Bar Mutual's capital resources being projected to exceed the maximum end of the target range allowed under the Capital Resources Policy. Moreover, the actuarial projections for the next three financial years show Bar Mutual's capital position continuing above the target range allowed in the Capital Resources Policy.

Accordingly, and as a part of the plan to manage Bar Mutual's capital position back down to the target range set out in the Capital Resources Policy over a reasonable timeframe, for the purposes of the forthcoming 2017 renewal, firstly, the annual review of premium rates focussed on seeking to achieve reductions in rates where reductions could be justified by reference to the usual rating methodology, with the result that rates for several areas of practice have been reduced; and secondly, the premium deferral has been increased to 27.5% (it was 20% for the 2016 renewal). The Board recognises that, at 27.5%, the deferral is unusually high. However, since one of Bar Mutual's operating principles is to collect no more premium income from its Members than it needs, the Board considers the increase in the size of the deferral to be appropriate for the 2017 renewal as part of a longer-term plan to manage Bar Mutual's capital resources.

It is anticipated that these changes will generate an underwriting loss of approximately £1.4m for the 2017-2018 financial year. The Board anticipates continuing with a policy that produces operational losses up to the 2019-2020 financial year in order to bring Bar Mutual's capital levels in line with the target range of the Capital Resources Policy. Naturally, if Bar Mutual's actual claims experience and investment returns depart from current projections or if Bar Mutual's regulatory capital requirements materially increase for any reason, then the Board will reconsider this approach.

Pursuant to its usual practice, the Board has waived the right to request payment of the premium deferral of £2.056m for the 2010 policy year, which takes the total premium saved by Members since the deferral was introduced in 1999 to £19m.

Legal Services Board

In last year's interim report I noted the intention of the Legal Services Board ("LSB") to consider the restriction that the Bar Standards Board ("BSB") has placed on the self-employed Bar's choice of professional indemnity insurer. Rule C77 of the BSB Handbook obliges all self-employed barristers to purchase their primary level of professional indemnity insurance from Bar Mutual.

The LSB published its report, "Thematic Review of Restrictions on Choice of Insurer", in July 2016. The report concluded that, as an Approved Regulator, it was for the BSB to satisfy itself that the current insurance arrangements for the self-employed Bar met the regulatory objectives of the Legal Services Act 2007 and the Better Regulation principles.

Bar Mutual's Directors are satisfied that the current arrangements do satisfy the criteria listed in the LSB's report and also take the view that the current reciprocal obligation of the self-employed Bar to self-insure with Bar Mutual and of Bar Mutual to insure them should be extended to include single person entities authorised to practise by the BSB. In support of the BSB's attempts to encourage innovation in the way barristers provide legal services to the public, Bar Mutual agreed in early 2015 to insure all single person entities that approached it for insurance and to offer insurance to multi-person entities on a discretionary basis. This was on the understanding that the BSB would apply to the LSB for permission to amend the Handbook to require single person entities to insure with Bar Mutual in the same way as self-employed barristers. It has taken the BSB much longer than originally anticipated to make progress on this front, but on the basis of the BSB's representations that progress is now being made, Bar Mutual has agreed to extend for a third year its agreement to insure all single person entities as of right and multi-person entities on a discretionary basis.

Accordingly, at the 2017 renewal Bar Mutual will provide cover to all BSB-authorised single person entities that request it and to BSB-authorised multi-person entities and alternative business structures on a discretionary basis.

In offering insurance to multi-person entities and alternative business structures, the Bar Mutual's approach will be informed by the BSB's Entity Regulation Policy Statement, which favours entities whose activities are similar to those traditionally undertaken by the self-employed Bar.

Adequacy of Insurance Cover

Members may by now be tiring of the seemingly endless exhortation that they should exercise care to ensure they purchase an adequate level of insurance, whether within Bar Mutual's primary layer up to £2.5m or, where required by the nature of their practice, on layers above £2.5m. Apart from it being a requirement of the BSB Handbook that all self-employed barristers must ensure they have adequate insurance taking into account the nature of their practice (Rule C76.1 of the BSB Handbook), the plea is repeated because the Board sees at first hand the considerable worry and, on occasions, personal financial exposure that a shortfall in cover can cause – indeed, it has been necessary during the past year for a Member to contribute a six-figure sum from his own resources and in excess of his (inadequate) level of cover in order to resolve the claim against him.

Although such cases are, fortunately, quite rare, it is important that I again remind all Members of their obligations under Rule C76.1. When deciding what level of cover to purchase, Members should bear in mind that Bar Mutual provides insurance on a "claims made" basis - that is, the insurance policy (including the limit of cover) to which a claim will attach is the policy current at the time the claim is first made or circumstances from which the claim arises are first notified if that notification is to an earlier year. This is to be distinguished from "occurrence'" based cover, where the relevant policy of insurance is the one during which the alleged mistake occurs, regardless of when the claim is actually made.

Board of Directors

Finally, I come to the retirement from Bar Mutual's Board of Directors of Christopher Symons QC. The positions Christopher has held during his eight years as a Director of Bar Mutual – Deputy Chairman of the Board, Chairman of the Audit and Risk and Management Fee Committees of the Board and a member of a further three committees – do not fully express the true extent of his contribution to the work of the Board of Directors. In particular, it fell to Christopher, as chairman of the Audit and Risk Committee, to supervise the process by which Bar Mutual prepared for the introduction of the new Solvency II regulatory regime. I have benefited enormously from his incisive and wise counsel and his complete mastery of his areas of responsibility. I am sure that I speak for all Directors - indeed, all Members - in formally recording the huge debt of gratitude owed to him by those who benefit from Bar Mutual's continued ability to offer comprehensive professional indemnity insurance to its Members at a premium they can afford.

Colin Edelman QC
Chairman
January 2017