CHAIRMAN'S REPORT

Bar Mutual's Financial Position

The end of Bar Mutual's 2017-2018 financial year marked the thirtieth anniversary of the commencement of its provision of professional indemnity insurance to all self-employed barristers in England and Wales. Over this period Bar Mutual has grown from having no assets at all to a company with an investment portfolio valued at £76m. This achievement reflects the prudence and dedication of all of those who have served as Directors of Bar Mutual and who have been involved in the day to day management of the company since 1988, to whom all Members owe a debt of gratitude.

Readers of my reports over recent years will recall what I have said about the Board of Directors being conscious that the accrual of capital by Bar Mutual is not to be regarded as an end in itself. Rather, its purpose is to ensure Bar Mutual is able to comply with its regulatory capital requirements, to meet its current claims liabilities and to secure its ability to continue to meet such liabilities in the future, thereby providing financial comfort and confidence to its Members and those who pursue claims against them. The Board is aware of the desirability of not requiring Members to pay more in premium than is necessary to ensure Bar Mutual meets these crucial objectives with a prudent (but not excessively prudent) margin to spare.

To this end, after Bar Mutual's capital resources as at 31 March 2016 exceeded the upper target under its Capital Resources Policy, the Board decided to take two steps: to reduce the ratings applicable to a number of areas of practice where doing so was consistent with Bar Mutual's long-standing rating model and to increase the level of the premium deferral from 20% to 27.5% for the 2017 policy year renewal. These measures sought to achieve a gradual reduction (and eventual elimination) of the capital held in excess of that upper target over a reasonable timeframe (which the Board regarded as three years in the circumstances). In doing so, the Board was aware that taking these steps would be very likely to lead to an underwriting deficit for the financial year ending on 31 March 2018. In my January report, I informed Members that a deficit of £2.4m was projected at that time.

I can now report that Bar Mutual has recorded a deficit of £4.038m for the financial year ending on 31 March 2018. There are two principal reasons for the actual year-end deficit being higher than that expected in January. First, the deterioration in Bar Mutual's claims experience during the first half of the 2017 financial year continued through to the end of the year, with the consequence that it became necessary to make provision for additional reinsurance reinstatement premiums that may become payable in the future. Secondly, and in contrast to recent years when favourable returns have been achieved in spite of overall market results, Bar Mutual's investment return for the year was a negative -0.55% (a loss of £121,000) due to adverse market conditions earlier this year, in contrast to last year's positive return of 3.46%. This result demonstrates the extent to which the investment return is at the mercy of the markets and why Bar Mutual's Investment Policy remains cautious in nature.

The effect of this result on Bar Mutual's capital resources and the Board's programme to reduce the amount of capital held so that it falls within the targets suggested by the Capital Resources Policy is that, as at 31 March 2018, the excess of capital has been eliminated more quickly than had been expected. As at that date, Bar Mutual held capital resources of £40.821m, comfortably below the upper target of

£43.030m, comfortably above the lower target of £31.233m and safely in excess of its regulatory capital requirement of £19.436m.

For the avoidance of any doubt, Bar Mutual remains well-capitalised and protected against the risk of unexpected adverse events impacting on its solvency position.

Cover for Foreign Practice

One of the most obvious changes in the practices of barristers in England and Wales since Bar Mutual commenced business in 1988 is the ever-increasing importance for the practices of many Members of work undertaken abroad, whether in matters governed by English law or otherwise. Enquiries to the Managers about whether Bar Mutual would cover claims arising from this work have increased substantially in recent years, such that the Rules and Cover Committee of the Board undertook a full review of this issue earlier this year, prompted by, and with the involvement of, the Commercial Bar Association, the Chancery Bar Association and the Technology and Construction Bar Association.

The result of this review is to make it clear that where a Member accepts instructions via his/her English or Welsh chambers to act in proceedings outside England and Wales and the matter is governed by a system of law other than English or Welsh law, any claim arising from those instructions will be treated as having arisen from work that is incidental to his/her practice as a self-employed barrister in England and Wales. As such, any fee income from such instructions should continue to be declared in the normal way for each year's renewal.

Where, however, the instructions for such a case have not come through the Member's chambers in England and Wales, Bar Mutual will only cover the Member for claims arising from the instructions if (i) she is authorised to practise in the jurisdiction in question and (ii) Bar Mutual has specifically agreed to cover the foreign practice of this nature. Members will need to declare the fee income from this practice on a separate renewal form and a separate premium will be payable for the cover.

Amendments to the Terms of Cover to give effect to the Board's decision to adopt this approach came into force on 1 April 2018. Any Members who think they may be affected by these amendments should consult the Guidance Note on International Practice, a link to which can be found on the "Downloads" page of the Bar Mutual website (http://www.barmutual.co.uk).

Bar Mutual and the General Data Protection Regulation

In my Report in July last year, in advance of the coming into force of the General Data Protection Regulation ("the GDPR"), I highlighted the need for Members to take steps to ensure they were aware of how to minimise the risk of data security breaches and their obligations in the event of such a breach. Judging by the number of enquiries the Managers have received on this subject in recent months, it is clear that Members (or their chambers on a collective basis) have devoted much time and effort to meeting the challenges posed by the introduction of the GDPR. Many of those enquiries have related to the extent of cover for liabilities arising from breaches of the GDPR and, secondly, Bar Mutual's view on the retention of documents and information, especially after a Member's involvement in a case ends.

I am able to confirm that Bar Mutual's position on the extent of cover has not changed due to the GDPR. Where a data security breach is committed by a Member (or any person for whom she may be vicariously liable), a third party alleges that this breach has caused him loss and the third party seeks compensation from the Member, Bar Mutual will cover the Member for this claim (subject to the (unlikely) application of any relevant exclusion in the Terms of Cover). Where, however, the data security breach is the subject of an investigation by the Information Commissioner and that investigation leads to a fine being imposed on the Member, Bar Mutual does not indemnify the Member against the liability to pay that fine or any defence costs that may be incurred by the Member in relation to that investigation. This reflects the fact that Bar Mutual is a provider of professional indemnity insurance.

The question of retention of documents and information is very important in the context of claims against Members. All Members know from their own practices that contemporaneous documents or information will almost always be regarded as the best evidence of what happened, and of people's motivations, in the past and will normally be preferred over oral witness evidence on the relevant issue. This applies just as much to claims against barristers. The availability of such documents and information is of invaluable assistance to the Managers and those lawyers instructed to defend Members as they evaluate the merits of claims and determine how best to safeguard the interests of both the Member subject to any particular claim and Bar Mutual.

As such, Bar Mutual believes that Members should be treated as having good reason to retain such documents and information. With this in mind, I would urge Members to continue to retain notebooks and (as regards documents that are more likely to be retained in soft copy) emails and, importantly, their attachments, attendance notes and documents they have drafted and to do so for at least fifteen years (which is the long-stop limitation period under section 14B of the Limitation Act 1980). Those whose practice involves infants and protected parties (in particular, those acting for claimants in catastrophic personal injury disputes) should consider adopting an even longer retention period.

Board of Directors

Since my report in January, Stephen Arthur has resigned from the Board as a result of the pressure of professional commitments. Stephen became a Director in December 2010 and assiduously served on the Board's Audit and Risk Committee, Rating and Reinsurance Committee and Reserves Committee, the work of which lies at the heart of Bar Mutual's business operations. The Board has benefited immensely from his consistent and good-humoured willingness to challenge long-standing assumptions and his strong commitment to Bar Mutual's continuing development. On behalf of the Board and all Members, I wish to thank him publicly for his substantial service to Bar Mutual and to wish him well for the future.

The reason for Stephen's departure only serves to highlight the amount of invaluable, but unpaid, work undertaken by all Directors on top of their own professional and personal commitments. I wish to thank all of them for their willingness to serve as a Director and their important contributions to ensuring Bar Mutual continues to prosper as it pursues the mandate it was given thirty years ago: the provision of comprehensive professional indemnity insurance to all Members at rates that are fair and reasonable.

Colin Edelman QC
Chairman
26 July 2018