

Renewal Form – Explanatory Notes

Members are asked to take note of the following:

“Claims Made” Warning

All policies of insurance provided by Bar Mutual are written on a “*claims made*” basis. Your cover will respond to relevant claims that are first made against you (and anyone else who is covered under your policy) during the Period of Insurance or which are deemed to have been so made by reference to a notification of a Circumstance. Your cover for the forthcoming 2018 policy year will *not* respond by reference to the date of the alleged incident give rise to any Claim.

Accordingly, all Members are urged to purchase a limit of cover that reflects the nature of the claims risk posed not only by the work they expect to undertake during the 2018 policy year but also by reference to the claims risk posed by work undertaken within any period of limitation that may expire on or before 31 March 2018.

Insurance Act 2015 Warning

Attention is drawn to clauses 4.2, 4.3, 4.7 and 9 of the Bar Mutual Terms of Cover (2017 Edition), which may put the Insured in a worse position than he, she or it would be under the Insurance Act 2015.

Section 1 : Gross Fee Income

Your basic contribution for 2018/2019 is determined, as in previous years, by applying varying rates to the income derived from each area of practice. Please write in the first box on the form the total fees you received (your Gross Fee Income) from practice at the Bar (without VAT), during the last calendar year or as declared in your VAT returns for that year. A specific figure should be entered in the box, not, for example, "max". Please do not enter fees derived from work for which Bar Mutual does not offer cover.

If this renewal is your first as a Member of Bar Mutual, you must declare in the first box on the form the **aggregate** of the following:

1. Your fee receipts from the date on which you commenced practice until 31 December 2017; and
2. A projection for your fee receipts during as many months from January 2018 as is necessary to make a total of 12 months of fee receipt data

For example, a Member who commenced practice in August 2017 will declare the aggregate of

- i) His fee receipts for the five months to 31 December 2017; **and**
- ii) His projected fee receipts for the first seven months of 2018

in the first box.

Section 2 : Limit of Cover

Your limit of cover depends on the amount of your Basic Contribution and increases in steps. By paying an Optional Contribution, you may purchase cover up to a limit higher than that to which your Basic Contribution entitles you. For further information please view the Rating Schedule on Bar Mutual’s website. If you would like to specify a higher minimum limit of cover, please tick the appropriate box 2, 3B - 6B.

Bar Mutual does not provide cover in excess of £2,500,000. You are strongly encouraged to give serious consideration to purchasing such cover. In order to assist barristers in obtaining higher cover, Bar Mutual has agreed with two brokers – TLO and LONMAR - that Bar Mutual will send details of a barrister's fee income, areas of practice and claims history to one or both of these firms. If you would like Bar Mutual to act for you in this way, please indicate to which broker(s) Bar Mutual is authorised to send details by ticking box 2, 8B and/or 9B. The broker(s) will then contact you direct.

In the event of a finding of professional misconduct, a deductible of £350 will be payable. A deductible of £350 will also be applied in the case of successful wasted costs applications.

Section 3 : Practice Profile

In this section, please break down your fees received into the most relevant areas of practice from the list and show the results as percentages in the column headed "% GFI" (gross fee income). The total should be 100%. **Please use whole numbers and do not use decimals.**

In the next column headed "% Crown", please record as a percentage of the percentage declared against each individual area of practice, how much of your income in that area derives from instructions given on behalf of the Crown by, for example, the Treasury Solicitor or any Central Government Department, including the Crown Prosecution Service and HMRC, where the client is the Crown or one of its manifestations. This does not include instructions on behalf of other national organisations nor on behalf of local government.

For example, if you have declared 25% of your Gross Fee Income against a particular area of practice, and all of that income derives from the Crown, enter 100% in the next column.

Your Clerk has a table which serves as a guide to the allocation of most types of work to the areas of practice and this is also available on the downloads section of the website. Without being exhaustive, it addresses the considerable uncertainty which still exists, particularly in those areas where enquiries to the Managers have been recorded in the past. The Managers are, of course, available to assist in cases of doubt. The following notes may further assist you.

3D Commercial – Fees in respect of work relating to civil and commercial proceedings in which fraud is alleged should be categorised as Commercial, **unless** the fraud allegations concern fabricated or exaggerated injuries or losses in personal injury proceedings. Fees for the latter type of work should continue to be categorised as Personal Injury. *Work previously categorised as "Financial Services" (namely, advice, drafting and advocacy relating to financial services legislation other than in respect of criminal proceedings) should now be included within Commercial.*

3N International Law means work relating to Public International Law. Fees for work in other areas of practice that has international aspects to it (for example, the lay client is based outside England or Wales or the work is performed outside England and Wales) should be allocated to the relevant area of practice, **not** International Law.

3S Public Law is the area of practice previously named "Parliamentary & Local Government". Fees from work previously declared under the latter heading should now be declared as "Public Law".

Members are reminded that fee income relating to judicial review proceedings in respect of planning issues, professional disciplinary proceedings, immigration appeals and financial services regulatory proceedings should not be categorised as "Public Law" but within the area of practice relevant to the subject matter of the judicial review proceedings.

3YC 3YD & 3YE Personal Injury, Professional Negligence and Other Common Law

"Personal Injury" work includes all income derived from cases in which damages for personal injury, fatal injury or illness are being claimed. Thus income from any case in which there is a claim for damages for personal injury should be declared against this area. *This includes claims for medical negligence, even though there is a separate category for Professional Negligence.*

However, where a case involves a claim, for instance, against a solicitor for professional negligence, the income should be declared under the "Professional Negligence" area, even though the underlying matter may be related to personal injury. "Professional Negligence" therefore includes all cases where a professional is being sued for negligence or breach of duty other than medical negligence, and irrespective of the court in which the proceedings are brought or contemplated.

The remaining "Other Common Law" area includes all common law work which is not specifically addressed in this section or properly to be declared against another area of practice.

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3O The Bar Mutual Terms of Cover automatically include cover for barristers acting as Arbitrators, Umpires or Mediators. If you do not wish to have this cover please do not declare any income for this part of your practice in Box 1 and leave this box empty. If, however, you want cover but have not earned any fees from this area during the calendar year – simply place a tick in the box.

3Z If you are unable to allocate fee income to any of the areas of practice, please use this space but describe the work from which the income is derived. The Managers will then try to allocate the income to the appropriate area of practice. If this is not possible you should be aware that the rate for this "area" is 2%.

3W Revenue - Please split your revenue work between the three boxes (WD, WE and WF), clearly indicating the percentage received from Crown instructions, from Non-Crown instructions in contentious matters and from Non-Crown instructions in non-contentious matters.

If you have advised or drafted documents where the sole or predominant object of the matter is to mitigate liability to pay any tax (which includes any form of duty or levy imposed by any level of government), **the fees received for this work should be declared as Revenue: Non-Crown: Non-Contentious**. Examples of such work are:

- Instructions to chancery counsel to advise on and/or settle a will or deed of variation or trust instrument, where the sole or predominant objective of the client is to reduce liability for capital gains tax or inheritance tax;
- Instructions to company or commercial counsel to advise on and/or draft documentation for a possible corporate (or corporate group) reconstruction, merger or reorganisation, where the sole or predominant objective is to reduce liability for capital gains tax or corporation tax.

If you have advised on any matter in which one of the issues falling within the scope of your instructions concerns liability to pay any tax (which includes any form of duty or levy imposed by any level of government), **the fees received for this work must be apportioned between the appropriate Revenue: Non-Crown area of practice (depending on whether the matter is Contentious or Non-Contentious) and the other area of practice**. Examples of such work are:

- Advice on tax issues arising in ancillary relief proceedings;
- Advice on stamp duty land tax issues in real estate or landlord and tenant matters (whether contentious or non-contentious);
- Advice on liability for income tax in employment matters.

Revenue: Non-Crown – Division between Contentious and Non-Contentious

Fees received in respect of the following work must be declared as **Revenue: Non-Crown: Contentious**

- All work related to advice on, preparation and progress of litigation against HMRC in relation to tax, including an appeal or application to either of the Tax Tribunals or any of the appellate courts, a reference to the European Court of Justice, and proceedings by way of judicial review. For the avoidance of doubt, this includes advice given to professional clients about the possibility of challenging HMRC's treatment of a past transaction prior to the identification of the lay clients in whose name any such challenge may be brought;
- Giving advice to a taxpayer in relation to the tax implications of transactions or events or profits or gains for periods or years of assessment which are past, and in relation to the tax treatment of which HMRC have indicated a contrary view to that put forward by the taxpayer; including the settlement of correspondence on behalf of the taxpayer, and the entering into negotiations with HMRC.

Fees received in respect of all other Revenue: Non Crown work must be declared as **Revenue: Non-Crown: Non-Contentious**.

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3/ Please indicate the percentage of your total fees which arises from any form of international work in respect of which fees are not subject to VAT. This information is for Bar Council statistical purposes and not for rating and the Bar Council will be supplied with a summary only, thereby preserving individual confidentiality.

Section 4 : Payment of premium by instalments

Bar Mutual has made arrangements for payments to be made via six monthly instalments by means of direct debit. Please note that each barrister will need to enter into a credit agreement with Premium Credit Limited, and there will be an additional charge for this facility. For those members who have already elected to pay by this method, their credit agreement will continue unless Bar Mutual and PCL are advised otherwise. Please note that the charge for using the credit agreement has increased this year from from **3.45% to 3.55%**.

In assessing the application for credit PCL may use a credit reference agency that leaves a record of a search or other information. PLC have entered into a “Closed User Group” enabling access to other lenders’ credit performance data and as part of their reciprocal commitment to the group they are required to share their own customer loan data. They will share a monthly file securely with Equifax, their chosen Credit Reference Agency. This will contain customer details such as customer name, loan amount, monthly instalment value, and whether payments were paid in a timely fashion and – if not – the number of open and unpaid instalments.

If a payment is missed this may have an impact on the barrister’s ability to gain access to additional credit.

Section 5 : Cover for practise as a Foreign or European Lawyer

Please tick this box **ONLY** if you are (1) qualified to practise in another system of law and (2) wish to apply for cover for your practice in that other system. You will then receive a separate application form. Those members who have already applied for Foreign Cover will be sent a further renewal form to complete.

You do **NOT** need to apply for separate cover in another common law jurisdiction as a Practising Barrister or Registered European Lawyer if your qualification as such enables you to practise in that jurisdiction (subject to any formal local requirements in that jurisdiction as to call or certification).

Sections 6 and 7 : Public and Licensed Access Work

If you have received fees via Public or Licensed Access Work (Licensed Access combines “BarDIRECT” and “Direct Professional Access”) please enter the percentage of those fees in the relevant boxes.

Section 8 : Authority to Conduct Litigation

If you exercise a right to conduct litigation granted by the BSB, please indicate the percentage of fees derived from this work in the last calendar year.