

CHAIRMAN'S REPORT

Bar Mutual's Financial Position as at 31 March 2019

I am pleased to inform Members that Bar Mutual's operations during the course of the year that ended on 31 March 2019 have resulted in a surplus of £0.342m. Because Bar Mutual is a company limited by guarantee and does not have shareholders who expect to receive a dividend, all this surplus has been applied to its free reserves, thereby reducing the amount of premium income that has to be collected from Members in order to ensure the company's income needs are met.

Several aspects of Bar Mutual's performance over the last financial year warrant particular comment. First, gross payments during the year in respect of claims were £15.84m. This is a high figure and was primarily due to the payment of a number of high-quantum claims. However, £3.93m of this expenditure was recovered from the company's excess of loss reinsurance. In addition, better than expected claims experience on the now mature 2013 and 2014 policy years has allowed the release of £1.34m from the claims reserves. The result is that Bar Mutual's net claims incurred during the year to 31 March 2019 came in at £10.57m.

Second, after last year's disappointing negative investment return, Bar Mutual once again achieved an outstanding net investment return of £2.37m (or 3.59%) in what continue to be very difficult and volatile market conditions, against a benchmark return of 1.91% under the Investment Policy. Lest Members be concerned that this result may be the consequence of aggressive (and, thus, risky) asset class allocation by the Investment Manager, Thomas Miller Investment Ltd, it must be noted that the Investment Policy is conservative in nature (for example, the minimum percentage of Bar Mutual's portfolio that must be held in cash and/or fixed income products is 45%). A conservative approach is adopted because the overarching aim of the Policy is simply to maintain the value of the portfolio by reference to CPI so that it is available as a loss reserve.

It is due to this investment performance that, instead of recording the projected £0.611m deficit to which I referred in my report to you in January, the company achieved a surplus for the financial year. Credit for this result, and for the substantial, benchmark-exceeding investment returns attained by Bar Mutual over the past six years, must go to Richard Jarvis of Thomas Miller Investment Ltd, who will be retiring next month. The Board wishes him well in his retirement.

In capital management terms, the above results mean that, as at 31 March 2019, Bar Mutual held capital resources of £42.06m, as against a regulatory capital requirement of £19.23m. The Capital Resources risk appetite statement followed by the Board meant that, at year-end, the lower target for Bar Mutual's capital resources was £31.01m and the upper target was £42.79m, so Bar Mutual's capital resources were £0.78m below the latter target. The Board is confident that this provides Bar Mutual with a sound financial basis on which it can face the future.

Minimum Terms of Cover for Self-Employed Barristers and Insurance Requirements for Single Person Entities

As part of improving its governance of the professional indemnity insurance arrangements applying to those whom it regulates and who are self-employed barristers, the Bar Standards Board recently promulgated Minimum Terms of Cover

for Self-Employed Barristers. Bar Mutual was consulted on the content of the BSB Minimum Terms document.

What is notable for any reader of both Bar Mutual's Terms of Cover and the BSB Minimum Terms (and, for that matter, the BSB's Minimum Terms of Entity Cover, introduced in 2015 when the BSB began to authorise entities to practise) is the extent to which both documents are almost identical, which I believe is very much to Bar Mutual's credit. This reflects how the Directors and Managers of Bar Mutual have consistently sought to ensure over the years that the breadth of Bar Mutual's insurance terms benefits not only Members, but also (very importantly) the interests of those who have a valid claim for compensation against a Member. Bar Mutual has never used the absence of a Minimum Terms regime as an opportunity to restrict the scope of cover in a way which would be contrary to the public interest and looks forward to working with the BSB to ensure that its Minimum Terms of Cover for Self-Employed Barristers remain effective in the future.

I am also very encouraged to note that, after a very long gestation period, the BSB has recently lodged with the Legal Services Board an application to amend its Handbook to make it compulsory for all single person entities (ie an entity with a single owner, where the owner is also the entity's sole fee-earner) to purchase the first £2.5m of their professional indemnity insurance from Bar Mutual. Given that the underwriting risk posed by a single person entity is identical to that posed by a self-employed barrister, the Board of Directors has long been of the view that each mode of practice should be subject to the same professional indemnity insurance arrangements. The Board looks forward to the LSB approving the BSB's proposed amendment in time for it to come into effect for the 2020 policy year.

Clause 1.3 of the Terms of Cover and Limits of Cover

As Members will be aware, a unique feature of their cover with Bar Mutual is the discretion contained in clause 1.3 of the Terms of Cover, pursuant to which the Directors (normally in the form of the Claims Committee) may decide to indemnify a Member against a claim even when there is no entitlement to indemnity or the claim is one that is specifically excluded from cover. However, the exercise of this discretion is conditioned by the terms of Bar Mutual's Memorandum of Association, which states that it should only be exercised where Bar Mutual considers it to be "in the interests of the practising Bar as a whole or of the public or of the Company".

With this in mind, Bar Mutual was concerned to learn in late March that one of the two brokers who offer to arrange excess layer cover above its primary layer of £2.5m plus defence costs for Members had said in its promotional material that requests for additional monetary cover via the discretion would be approached "sympathetically".

Regrettably, these comments misstate Bar Mutual's consistent practice over the past 20 years, which has been to decline all requests from Members invoking the clause 1.3 discretion as a means to increase the amount of cover available to them after they have received (or have had to settle) a claim that exceeds their limit of cover. Other requests for exercise of the discretion are granted only exceptionally and only if they meet the criteria quoted above. Accordingly, Members should not give any credence to suggestions that Bar Mutual may exercise its discretion under clause 1.3 to provide them with additional cover, whether within the £2.5m primary layer of insurance provided by Bar Mutual or above £2.5m.

Board of Directors

In accordance with the terms of the Board's Nominations Policy, Alexandra Healy QC will be stepping down as a Director at the Annual General Meeting on 2 October 2019. Alexandra became a Director of Bar Mutual in June 2010 and has served on all of the Audit and Risk Committee, Legal Services Act Committee, Management Fee and Oversight Committee and Reserves Committee at various times over the past nine years. As befits someone with an outstanding practice as a criminal silk, the hallmark of Alexandra's contribution to Board and Committee meetings has been her invaluable ability to ask incisive questions that invariably cut to the heart of the matters under consideration. On behalf of the Board and all Members, I would like to thank her for the time she has committed to Bar Mutual on top of a busy professional and family life and to wish her well for the future.

The Board will shortly be replacing Alexandra with another barrister whose practice focuses on criminal law, in keeping with its goal of ensuring its deliberations benefit from the broadest range of perspectives from across Bar Mutual's membership.

Colin Edelman QC
Chairman

4 July 2019