

Renewal Form – Explanatory Notes

IMPORTANT – MEMBERS MUST TAKE PARTICULAR NOTE OF THE FOLLOWING:

- **“Claims Made” Warning**

All policies of insurance provided by Bar Mutual Indemnity Fund Ltd (“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 2020 policy year will ***not*** respond by reference to the date of the alleged incident giving 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 2020 policy year but also by reference to the claims risk posed by work undertaken within any limitation period that may still be running on or before 31 March 2021.

- **Insurance Act 2015 Warning**

Attention is drawn to clauses 4.2, 4.3, 4.7 and 9 of the Bar Mutual Terms of Cover (2018 Edition), which may put the Insured in a worse position than that which he, she or it would be in under the Insurance Act 2015.

- **Insurance Distribution Directive Notice**

Bar Mutual is a mutual insurance company. It does not give personal recommendations in respect of the insurance product it provides. The insurance cover it provides is based on information supplied by you.

Premiums are calculated by reference to your gross fee income received (or, for new applicants for cover, projections of gross fee income received) and the areas of practice in which that gross fee income was earned. A Rating Schedule (which sets out the rates applied to each area of practice for premium calculation purposes) is published annually. A basic premium is calculated and automatically generates a limit of cover of between £500,000 and £2,500,000. This premium and limit of cover cannot be reduced. The limit of cover can be increased, however, by the payment of an increased premium.

Bar Mutual Management Company is remunerated through a fixed annual management fee. Further information about this fee is disclosed in Bar Mutual’s annual financial statements, which can be found at www.barmutual.co.uk. Bar Mutual Management Company has no employees. All those involved in Bar Mutual’s day to day operations are employees of Thomas Miller & Co Ltd, which (like Bar Mutual Management Company) is a wholly-owned subsidiary of Thomas Miller Holdings Ltd.

Section 1 : Gross Fee Income

Your Basic Contribution for 2020/2021 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 from practice at the Bar (without VAT) (your “Gross Fee Income”) 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 include income from work for which Bar Mutual does not offer cover.

If this renewal is your first as a Member of the 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 2019; and
2. A projection for your fee receipts during as many months from January 2020 as is necessary to make a total of 12 months of fee receipt data.

For example, a Member who started practice in August 2019 will record in the first box the aggregate of

- i) His or her fee receipts for the five months to 31 December; **and**
- ii) His or her projected fee receipts for the first seven months of 2020.

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 urged 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) to 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 Gross Fee Income into the most relevant areas of practice from the list and show the results as percentages in the column headed "% GFI". 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 in a particular area of practice and all of that income derives from Crown instructions, please enter 100% in the next column.

Your clerk has a table which provides guidance for the allocation of most types of work to the areas of practice. This is also available in the "Download" section of the website. Without being exhaustive, it addresses the 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: 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 and 3YE Personal Injury and Other Common Law: "Personal Injury" includes all income derived from cases in which damages for personal injury, fatal injury or illness are being claimed. 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/clinical negligence.

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"Other Common Law" includes all common law work which does not fall into either Personal Injury or Professional Negligence or cannot properly be declared against another area of practice.

3O The Bar Mutual Terms of Cover automatically include cover for Members 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 do want the cover but have not received any fees from this area during the calendar year, please simply tick 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 impossible, 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 financial remedies proceedings following divorce;
- 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, proceedings by way of judicial review and restitutionary claims. 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; or 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.**

3/ International Practice: 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, not for rating. The Bar Council will be supplied with a summary only, thereby preserving individual confidentiality.

Section 4 : Payment of premium by chambers

Please tick this box only if chambers have agreed to settle your premium on your behalf.

Section 5 : Foreign Practice and practice as a 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 for this aspect of your overall practice.

Bar Mutual's approach to insuring "Foreign Practice" was amended during 2018. Only fee income deriving from work with all of the following features is now to be treated as "Foreign Practice":

- The instructions relate to proceedings outside England and Wales;
- The subject matter of the instructions is governed by a system of law other than the law of England and/or Wales;
- The Member is authorised to practise in the relevant jurisdiction; and
- The instructions have not been clerked or administered via the Member's chambers in England and Wales.

For the avoidance of doubt, Bar Mutual provides cover for Foreign Practice at its absolute discretion.

Members engaged in foreign practice are responsible for ensuring that professional indemnity insurance cover is in place satisfying the requirements (if any) of the foreign jurisdiction in which they practice. Bar Mutual has in the past provided insurance to barristers who, incidentally to their practice in England and Wales, also practice in the Republic of Ireland. However, as the Irish authorities have recently introduced (in November 2019) a requirement that Irish barristers must be insured under a "qualifying insurance policy", and Bar Mutual is not authorised or licensed to transact business in the Republic of Ireland under the new requirements, a policy with Bar Mutual will not in future satisfy the rules for practice in the Republic of Ireland.

Bar Mutual is in the process of clarifying with the Irish authorities precisely how the revised requirements introduced in November 2019 are intended to operate.

Sections 6 and 7 : Public and Licensed Access Work

If your Gross Fee Income includes fees from work in which you were instructed pursuant to Part 2, Section D2 of the Bar Standards Board Handbook, please enter the percentage of your Gross Fee Income represented by those fees in the relevant boxes.

Section 8 : Authority to Conduct Litigation

If you exercise a right to conduct litigation granted by the Bar Standards Board, please indicate the percentage of your Gross Fee Income derived from cases in which you exercised such a right.

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