CHAIR'S INTERIM REPORT – JANUARY 2022

Introduction

I noted in the Directors' Report and Financial Statements for the year ended 31 March 2021 that the premiums charged by Bar Mutual were likely to increase at renewal of the 2022/23 policy year, and that this was for two reasons. The first was the increase in the cost of reinsurance. Our reinsurance premiums had increased at renewal of that contract for the 2021/22 policy year because of our increased reliance on the reinsurance policies caused by a spike in the severity of the claims notified to Bar Mutual as well as a general hardening of the reinsurance market. A further increase for the cost of reinsurance is expected for the 2022/23 policy year. The second was the Board's commitment to Bar Mutual adhering to the risk appetite for capital it had set for itself.

At its December meetings the Board, informed by recommendations made to it by the Rating and Reinsurance Committee, considers the premiums Members should pay for the forthcoming renewal. As a result of this year's deliberations the premiums paid by all Members at renewal of the 2022/23 policy year will increase as the Board decided that applying a premium deferral would not be in line with the Board's risk appetite; this compares to the premium deferral for the 2021/22 policy year of 7.5%. This will also allow for the raising of a modest amount of additional capital which was considered to be desirable having regard to that risk appetite. Some Members will see an additional increase in their premiums for a second reason, which is that application of Bar Mutual's rating methodology will have resulted in an increase in rates for some areas of practice.

Before setting out and explaining the Board's decision, it may be helpful for me to provide some background.

Claims

For many years Bar Mutual's most expensive policy year for claims was the 2011/12 policy year. For claims notified in that policy year Bar Mutual paid a total of £14.4m which reduced to £10.5m after taking into account the insurance (in the form of reinsurance) Bar Mutual purchased to mitigate its financial exposure.

The performance of the policy years immediately following the 2011/12 policy year suggested a pattern of gradually declining claims payments. Thus, based on the latest claims position, the 2012/13 policy year saw gross payments of £11.1m (£8.7m net) and the claims experience in the following two policy years was remarkably light, as the 2013/14 policy year saw gross payments of £7.4m (£7.2m net) and the 2014/15 policy year saw gross payments of £6.6m (£6.6m net). The claims curve started increasing on the 2015/16 policy year. It produced gross payments of £12.3m (£8.6m net) and presaged an upward trend in claims. Thus, the 2016/17 policy year saw gross payments of £12.6m (£10.2m net) and the 2017/18 policy year say gross payments of £13.0m (£10.3m net).

As Members will know, although Bar Mutual insures its Members on a 'claims made' basis there is still a 'long-tail' aspect in that it takes some time (on average 5 – 7 years) for the final claims position on a policy year to plateau. Following the revival at the end of last year of some large claims on the 2018/19 policy year, it is now clear that both the 2018/19 policy year and the 2019/20 policy year are amongst Bar Mutual's worst performing policy years for claims. The current incurred (the amount paid and estimated) for the former is £13.7m (£10.0m net); and for the latter it is the unprecedented amount of £18.5m (£11.9m net). Looking to the future, however, there is some encouraging news on both the 2020/21 and 2021/22 policy years, with the claims pattern suggesting a return to the relatively benign claims experience seen in earlier policy years. Of course both these policy years are still relatively undeveloped, but (i) the gross and net incurred for both policy years is currently below £5m when the incurred for the 2018/19 and 2019/20 policy years at a similar stage in their developments was very much greater and (ii) the total number of notifications for both policy years is below that of the three immediately preceding policy years.

This is all a reflection of the "roller coaster" ride that the claims experience for a professional indemnity insurer can be and is why the Board has set its risk appetite for capital and has reinsurance arrangements in place to cater for the peaks and troughs in the claims experience.

Costs of Reinsurance

It will be apparent that reinsurance has played a considerable part in reducing Bar Mutual's financial exposure to claims. Taking the 2019/20 policy year as an example, reinsurance has reduced Bar Mutual's gross exposure of £18.5m to £11.9m with Bar Mutual's reinsurers incurring £6.5m in reinsured costs. Naturally, a call on the reinsurance policy of this magnitude will inevitably trigger an increase in reinsurance costs. Our Managers had forecast a 15% increase in the reinsurance premium for the 2021/22 policy year, taking the reinsurance premium from £3.6m to an estimated £4.1m. However, in the face of a hardening reinsurance market, the actual reinsurance premium negotiated for the 2021/22 policy year was £5.3m (a 47% increase).

Bar Mutual's Risk Appetite for Capital

As most Members will I believe know, Bar Mutual's Board has an agreed policy covering the amount of capital it should hold (the risk appetite for capital). The first obligation is to hold 100% of the regulatory Solvency Capital Requirement ("SCR") prescribed by the Prudential Regulation Authority. I am of course pleased to report that Bar Mutual's capital meets the required coverage of 100% of the SCR. The forecast Tier 1 regulatory capital (the amount of assets held in excess of Bar Mutual's liabilities) to 31 March 2022 is forecast to be £34.4m against a forecast SCR of £22.7m, a ratio of regulatory capital to SCR of 1.5.

Furthermore, the Board has agreed a risk appetite that requires Bar Mutual to maintain Tier 1 capital between a lower and upper target level. The purpose of the target range is to ensure that, should there be any unexpected adverse experience in the normal course of Bar Mutual's operations (for example a very bad claims year or a sharp decline in the value of the investment holdings) Bar Mutual would still comfortably meet its SCR. And it is worth observing that the efficacy of this practice was tested by the recent claims experience (developments on the 2018/19 and the 2019/20 policy years) and was found to be effective.

However, the forecast financial results to 31 March 2022 is an operating deficit of £2.0m. Application of the risk appetite as at 31 March 2022 produces a lower target level for capital of £35.1m and an upper target level of £47.5m. With Tier 1 capital of £34.4m Bar Mutual will be £0.7m below its lower target level for capital.

The Board decided that the process of re-building the defensive cordons is a long-term one and that it should start with the 2022/23 policy year. Strengthening the Mutual's capital position now will ensure that it is well prepared for whenever the next onslaught of claims arrives, as it inevitably will, given the cyclical nature of insurance.

Rates for the 2022/23 Policy Year Renewal

At its meeting in November 2021 the Rating and Reinsurance Committee completed the annual exercise of considering the projected costs for each area of practice (including claims costs, expenses and reinsurance costs) against each area's forecast fee income at renewal . This produces the 'notional rating' for each area, namely the rate to be applied to the projected fee income that would cover the projected costs.

As the notional rate exceeded the current rate for a number of practice areas, at its meeting on 9 December 2021 the Board agreed the rating changes recommended by the Rating and Reinsurance Committee.

As a result the rates for one-third of the thirty practice areas will increase at the 2022/23 policy year renewal. The rate for one area of practice (Landlord & Tenant: Non-Residential) will reduce from 2.0% to 1.8% and the rates for the remaining areas of practice will remain the same. The table below identifies the rate rises.

Area of Practice	***Rate for 2021/22***	***Rate for 2022/23***
Family: Children	0.15%	0.18%
Crime	0.25%	0.35%
Immigration	0.25%	0.35%
Insolvency	0.50%	1.00%
Employment	0.70%	0.80%
Family: Other	1.20%	1.30%
Landlord & Tenant: Residential	1.20%	1.30%
Chancery: Non-Contentious	1.50%	2.50%
Other Common Law	1.65%	1.80%
Revenue: Non-Crown: Non-Contentious	7.50%	8.50%

For the reasons discussed above, the Board decided that no premium deferral would be offered at the 2022/23 policy year renewal.

Any increase in premium is understandably unwelcome, particularly in the face of the disruption caused to most areas of practice by the measures taken to try and deal with the Covid-19 pandemic. But it is important to put Bar Mutual's rate increases in context.

First, they reflect a market-wide shift in premiums charged for liability risks, and in particular for professional indemnity insurance. The level of Bar Mutual's rate increases compare favourably to the levels of increases seen by solicitors, for example. Public data for firms that renewed in October 2021 is not yet available. However, it is known that some solicitors renewing on 1 April 2021 saw qualifying primary layer insurers increasing rates by an average of 30%. As for those renewing in October 2021, the average rate increase was between 15% and 20%. Additionally, and this is a risk that Bar Mutual's Members are not exposed to, underwriters insuring solicitors sought to reduce their exposure by requesting reduced limits of cover and increases in self-insured excesses.

Second, Members will no doubt recall the withdrawal at last year's renewal from the market for barristers' professional indemnity insurance of the broker, Lonmar, who provided one of the two facilities offering insurance to self-employed barristers purchasing insurance above Bar Mutual's limit of £2.5m. Lonmar lost the support of its underwriters last year and they have not returned to offer top-up insurance for the 2022/23 renewal. The changed position on the excess layers of insurance for the self-employed Bar is mirrored in the professional indemnity insurance market for solicitors. There, some solicitors renewing in the first half of 2021 were met with rate increase of between 20% and 30% and the expectation amongst market commentators was that this trend would continue for the 1 October renewals.

Ending this section of my Interim Report with some good news, I can report that, in accordance with its usual practice, the Board agreed to waive the right to call for payment of the premium deferral of £3.5m for the 2015/16 policy year or to make any supplementary calls on that policy year.

Terms of Cover

Bar Mutual is unashamedly a mutual established with a view to not only protecting members of the public who use the services of the self-employed Bar, but also ensuring that its Terms of Cover keep abreast of the changing risks faced by self-employed barristers. The Terms of Cover have been expanded on numerous occasions in the past where this proved necessary, and in the course of this year they were expanded again to provide an indemnity for the legal costs of defending Hamid Proceedings (a judicially instigated disciplinary process) on the same basis as for BSB disciplinary proceedings (i.e. where the issue(s) in the disciplinary process could be relevant to an actual or potential civil claim).

This was also a year when the Board considered the cover provided by Bar Mutual in respect of cyber events. The insurance provided by Bar Mutual is intended to cover third party professional indemnity risks and not first party risks. As the scope of cover for cyber events is a live issue amongst insurers and their regulators, the Board decided in December 2021 that Bar Mutual's Terms of Cover should be amended to clarify that the policy provided protection against such third party risks but not against first party losses. Amendments to the Terms of Cover have therefore been prepared. However, they cannot come into effect immediately as Bar Mutual's Terms of Cover must now align with the minimum terms of cover ("MTC") published by the Bar Standards Board ("BSB"). The BSB will first need to consult on the changes before it can amend the MTC. The expectation, however, is that it should be possible for Bar Mutual to amend its Terms of Cover in advance of renewal of the 2022/23 policy year.

Board of Directors

In my July 2021 Report I thanked Michael Brindle QC for his enormous contribution to the work of Bar Mutual as a member of its Board. At the end of 2020 we lost three other hard working Directors, Gregory Denton-Cox, Nina Goolamali QC and Joanna Smith QC (now Mrs Justice Joanna Smith).

It has always been Bar Mutual's good fortune to be able to attract some of the best talents at the Bar as non-executive Directors. This tradition continues with the three new recruits to the Board of Directors. Anna Markham (4 Stone Buildings), Richard Handyside QC (Fountain Court) and Sushma Ananda (7 King's Bench Walk) all joined the Board in October 2021. Between them, they bring a broad range of experience and skills that will strengthen the Board and position it for the future. On behalf of the Board and all Members I am delighted to welcome all three to the Board and I thank them for their willingness to serve as Directors.

Given the ever-expanding reach of insurance regulations, maintaining a relatively large but thoroughly engaged Board of non-executive Directors is essential in setting and overseeing internal policies ensuring that Bar Mutual operates safely and effectively. A relatively large Board allows work to be disseminated across Directors, all of whom have very busy practices, without over-burdening any one of them.

Adequacy of Cover

It has become almost a ritual for me to underscore my annual reminder to Members of the need to ensure that they have adequate cover when deciding on the limit of cover they should purchase for the forthcoming renewal. I do this for two reasons. The first is so that Members meet the regulatory requirement in Rule C76.1 of the BSB Handbook to have adequate insurance covering all legal services they provide to the public, having regard to the nature of their practices. The second is having witnessed at first hand the misery caused to Members who for a variety of reasons find that their limit of cover with Bar Mutual is insufficient to meet the quantum of the claim made against them.

When deliberating over the limit of cover they should purchase Members should remember that their Bar Mutual and excess layers cover is written on a “claims made” basis. Accordingly, the level of their cover will need to be sufficient to meet not only claims arising from their current practice but also claims arising from their practice in the past, which may be capable of giving rise to claims with substantially higher quantum than the current practice, for example, of self-employed barristers who are winding-down their practices in readiness for retirement.

This year it also behoves me to say something about the availability of insurance in the layers above £2.5m, the excess layers. For those barristers who purchase excess layer insurance the availability of this insurance is critical to their practice. However, for both the 2021/22 policy year and the 2022/23 policy year TLO will be the sole facility available to the self-employed Bar. Its competitor broker, Lonmar, withdrew from this market at the 2021/22 renewal having lost the support of its underwriters. The perennial complaint of the excess layer underwriters is as to the risk of the premiums they receive not being sufficient to pay for the claims that emerge. Approximately one-third of the total number of Members that purchase a limit of cover of £2.5m with Bar Mutual do not go on to obtain any excess layer insurance. It is plainly in the interest of all Members who currently purchase excess layer insurance (and in the interest of those who may need to do so sometime in the future) for excess layer underwriters to continue offering cover. I therefore encourage all Members who currently obtain cover of £2.5m with Bar Mutual but who do not purchase insurance above this limit to consider completing question 2.8B of the renewal form authorising Bar Mutual to communicate to TLO the information they require to produce a quote for insurance in the layers above £2.5m.

Finally, I wish to extend my personal thanks to my fellow non-executive Directors who continue to give freely of their time as Directors of Bar Mutual, a role that is doubtless consuming an increased amount of their time.

I also wish to thank our Managers for the continuing quality of the service they provide to Members and to the Board of Directors.

Colin Edelman QC
Chairman
January 2022