

Bar Mutual and Insurance for Bar Standards Board – Authorised and Licensed Bodies

Frequently Asked Questions

- ***What does Bar Mutual mean by an “Entity”?***

An entity is any limited company, limited liability partnership or unlimited partnership regulated by the BSB.

- ***What does Bar Mutual mean by a “Single Person Entity”?***

BSB Authorised Bodies where a barrister with a current practising certificate issued by the BSB is the single owner and fee earner.

- ***What does Bar Mutual mean by a “Multi-Person Entity”?***

BSB Authorised Bodies with more than one owner and/or more than one fee earner, all of whom are lawyers with current practicing certificates.

- ***What does Bar Mutual mean by an “Alternative Business Structure”?***

BSB Licensed Bodies with more than one owner and/or more than one fee earner, managed jointly by a lawyer or lawyers with current practicing certificates and others who are not authorised individuals.

- ***Does Bar Mutual offer insurance to BSB-regulated Authorised and Licensed Bodies (Entities)?***

- a. *Yes, Bar Mutual has done so since 2015.*
- b. *Bar Mutual can insure all single person entities that seek cover from it, where the sole owner and fee earner holds a current practising certificate as a barrister issued by the BSB; is not, at the same time, an authorised person by any other approved regulator listed in Schedule 4 of the Legal Services Act 2007; and proposes to continue to hold that practising certificate as a barrister throughout the policy year for which insurance is sought.*
- c. *Multi-person entities and ABS's will be insured on a case by case basis.*

Bar Mutual is keen to ensure that it provides PII only to Entities that provide services similar to those provided by self-employed barristers and therefore present a commensurate insurance risk to Bar Mutual.

- ***How will Bar Mutual rate entities?***

Bar Mutual rates entities in the same way as it provides rating for self-employed barristers – that is, by considering fee receipts and the areas of practice in which those fees were earned.

- ***What if a single-person entity has an owner fee earner who is authorised to practice by both the BSB and the SRA?***

In this scenario, there will be no entitlement to insurance as of right. Instead, Bar Mutual will consider such applications on a case by case basis.

- ***I am a solicitor regulated by the SRA and wish to set up a BSB approved Single-Person Entity. Will I be able to obtain insurance from Bar Mutual?***

This will no longer be possible with Bar Mutual, as all SPEs will be required to have one owner fee earner who has a current practicing certificate as a barrister issued by the BSB.

- ***What if the Entity is owned by a barrister but the fee earners are mostly solicitors and/or non-barristers?***

It is not likely that Bar Mutual will provide PII insurance to this type of entity. There are various factors which Bar Mutual will take into account when exercising its discretion to provide PII insurance to entities, and this is discussed below.

- ***What factors will Bar Mutual take into account when exercising its discretion to provide PII to entities where there is no entitlement to insurance as of right?***
 - a. Whether the claims risk presented by the SPE, MPE or ABS is similar to the claims risks presented by self-employed barristers.
 - b. Whether all fee earners have higher rights of audience.
 - c. Whether, in the case of MPEs or ABSs, there is at least one owner who holds a current BSB practising certificate as a barrister and who proposes to continue to hold that practising certificate throughout the policy year.
 - d. Whether there is a minimum ratio of barristers holding current BSB practising certificates to solicitors/non-barristers of 1 in 4 e.g. for every 4 fee earners at the entity at least one of those should be a barrister with a BSB practising certificate. For every 8 fee earners, at least two should be barristers with BSB practising certificates.
 - e. Whether the barrister's proportion of the MPE's or ABS's income is reasonable to justify Bar Mutual's provision of insurance. This will be revisited on an annual basis with retrospective effect (i.e. taking the 12 months prior to the application for cover into consideration).
- ***I am a Single-Person Entity and sometimes use external consultants to carry out work for my entity. Will the external consultants be covered by my Bar Mutual insurance?***

If the external consultant is not an employee of your entity (for example, they are a self-employed barrister), they would not be covered. Bar Mutual's Terms of Cover define employee as *"Any person other than a Clerk who is employed (whether under a contract of employment or as an independent contractor) by the Insured or Chambers in connection with the Insured Practice, save where the Insured Member is an Entity and the person is a Self-Employed Barrister retained or instructed by or through the Insured Member"*.

What this means in practice is that the external consultant must be either an employee of the entity or meet the test of being an independent contractor. A self-employed barrister instructed as an external consultant by an entity will not be insured by the entity's policy of insurance with Bar Mutual. Insurance for the self-employed barrister

in these circumstance is expressly excluded as that barrister's insurance with Bar Mutual would cover them for any issues relating to work they have done for the entity in the course of their Insured Practice as a self-employed barrister.

- ***If a self-employed barrister decides to establish a BSB-regulated entity and to conduct his or her entire practice via that entity, will he or she have to purchase run-off cover to deal with claims arising from his or her previous self-employed practice?***

No. The BSB Minimum Terms of Entity Cover deem the entity to be the "Successor Practice" of any "Prior Practice" that has been regulated by the BSB. This means that the entity's cover with Bar Mutual will respond to claims arising from his or her previous practice as a self-employed barrister. There will be no insurance "black hole" for either the barrister or his or her former clients.

- ***If a barrister decides to continue to accept some instructions as a self-employed barrister and establishes an entity to conduct the balance of his or her practice, what is the insurance position? Will two insurance policies (one for the self-employed practice and one for the entity) be necessary?***

Yes. Two insurance policies will be required, one for the barrister's continuing self-employed practice and the other for claims arising from work performed on behalf of the entity.

- ***If a fee-earner of an entity is sued personally in addition to, or instead of, the entity in relation to work done on behalf of the entity, will he or she have cover under the entity's insurance?***

Yes. The definition of "Insured" in the Bar Mutual Terms of Cover includes fee-earners and employees of the entity.

- ***Will there be cover for an entity for a claim arising from the dishonesty of a fee-earner or an employee?***

In the case of a single person entity, the sole fee-earner's dishonesty or complicity in the dishonesty will mean that Bar Mutual will be entitled to deny cover. For a multi-person entity, cover will depend on who was dishonest or complicit in the dishonesty, and this will be considered on a case by case basis.

- ***Is it compulsory for BSB-regulated entities to insure with Bar Mutual?***

No, the entity is able to obtain insurance from alternative sources if it wishes to do so.

- ***If a self-employed barrister establishes an entity and decides to obtain insurance from a commercial insurer other than Bar Mutual, will Bar Mutual still cover claims arising from that barrister's former self-employed practice?***

If a claim was properly notified to Bar Mutual before the self-employed barrister ceased his self-employed practice, then Bar Mutual will treat the claim as falling within its Terms of Cover. If, however, the claim was not notified prior to the end of that practice and the cessation of the self-employed barrister's policy with Bar Mutual, any claim arising from the prior self-employed practice that was not notified to Bar Mutual will attach to the cover in place when it is notified i.e. the insurance which is place with the commercial insurer. The BSB Minimum Terms of Entity Cover require the entity's insurance to deal with claims relating to a Prior Practice to which the entity is a Successor Practice.

- ***What about claims relating to an entity that insures with Bar Mutual in year 1, but insures elsewhere in year 2? Or (ii) the reverse situation – insurance with a commercial insurer in year 1 and insurance with Bar Mutual in year 2?***

The relevant insurance policy is the one which is in place when the claim is notified. The answer to (i) is that if the entity is insured with Bar Mutual in year 1 and has already notified a claim to it then Bar Mutual would still handle that claim in the usual way. If the entity has not notified a claim and then changes to a commercial insurer in year 2, the commercial insurer would cover the claim. With regard to (ii), if the entity has already notified the commercial insurer of a claim in year 1 then the commercial insurer would handle the matter. If a claim has not already been notified to the commercial insurer, Bar Mutual would cover the matter if the entity notified it to Bar Mutual in year 2. However, the indemnity provided by Bar Mutual would be limited to the minimum compulsory cover of £0.5m plus defence costs. Additionally, the entity would have to pay a premium surcharge for its status as a Successor Practice of an entity that was not previously insured by Bar Mutual.

- ***Are non-fee-earners covered?***

Yes. Employees of the entity and non-fee-earners will be covered, by virtue of the extended definition of “Insured”.

- ***Is there be a minimum level of cover for entities insured by Bar Mutual?***

Yes. The minimum level of cover is £500,000 plus defence costs, each and every claim, the same minimum level as currently applies to self-employed barristers, as prescribed by the BSB.

- ***Will entities have to pay an excess in the same way as self-employed barristers?***

Yes, but in most instances the excess will be £0. However, an excess of £350 will be payable if a wasted costs order is made against an entity.