

CHAIR'S INTERIM REPORT – JANUARY 2026

Composition of the Board of Bar Mutual

In the Annual Report and Financial Statements to 31 March 2025, the then Chair of the Board, Rebecca Sabben-Clare KC, informed Members of her intention to resign as a Director given the tenure limits that applied to the Board of Bar Mutual, and that I would be succeeding her.

In light of the stature of my immediate predecessors as Chairs of Bar Mutual – Rebecca Sabben-Clare KC and before her Colin Edelman KC and Justin Fenwick KC – it is with a great deal of humility that I start my term as Chair of our insurance company, Bar Mutual Indemnity Limited.

Their commitment to Bar Mutual's founding principles – that the self-employed Bar should control its professional indemnity insurance and ensure that the long-term provision of this insurance is certain and its pricing stable – is an inheritance that I and your current Board are committed to continuing.

In the best traditions of the Bar, the Directors of Bar Mutual devote a considerable amount of their time for the benefit of the Bar as a whole. Despite these demands, Bar Mutual continues to attract eminent practitioners to its Board. I am delighted to announce that our most recent recruits to the Board are Jonathan Hough KC and Jacqueline Renton KC. Jonathan will add to the commercial and professional negligence expertise on the Board; Jacqueline will bring the perspective of the Family Bar to the Board. I welcome both of them as Directors of Bar Mutual. Their recruitment will continue to ensure that the Board's deliberations benefit from a broad range of perspectives from across Bar Mutual's membership.

The 2026/27 Policy Year Renewal

Those of you familiar with Bar Mutual's annual cycle of business will know that the premium paid by Members at renewal is considered every year by the Board at its December meetings and applied to the renewal the following April.

In agreeing the rates for areas of practice, Bar Mutual's guiding principle is that each practice area's forecast income for the upcoming policy year should roughly pay for its share of Bar Mutual's expenses for that year, which of course includes the costs of claims.

This approach requires that, to the extent possible and practicable, areas of practice should be rated according to the risk that they present to Bar Mutual.

Broadly, the rate for an area or practice increases where the forecast expenditure exceeds the forecast income and decreases where the forecast income exceeds the forecast expenditure. This policy is intended to ensure that Bar Mutual collects sufficient premium to guarantee its long-term viability, but does not collect higher premiums than are reasonably required to meet existing and anticipated claims for the periods in respect of which those premiums have been paid.

This year, the outcome of the rating calculations has resulted in an increase in the rate for one area of practice, but a reduction in the rates for four areas of practice.

The rate for Revenue: Non-Crown: Contentious will increase to 1.20% (it was 0.75%); and the rates for the following practice areas will decrease:

| Area of Practice | Rate Reduction |
|-------------------------------------|-------------------|
| Intellectual Property | 0.20% (was 0.25%) |
| Landlord & Tenant: Residential | 1.00% (was 1.10%) |
| Landlord & Tenant: Non-Residential | 1.50% (was 1.80%) |
| Revenue: Non-Crown: Non-Contentious | 6.00% (was 6.50%) |

The policy of targeting an annual operating outcome that results in the premium collected from Bar Mutual's Members matching its forecast expenses is not a precise science. The premium received by Bar Mutual for a policy year may exceed the forecast because, for example, fee inflation turns out to be higher than expected; or it may be that the investments perform particularly well. There are therefore periods when the Board judges that Bar Mutual has more funds than it reasonably requires to meet Bar Mutual's expenses and to comply with its capital requirements. That is the case as we approach the renewal of the 2026/27 policy year. As Members would rightly expect, the Board is inherently cautious in its approach to Bar Mutual's financial position. But the Board is also conscious of not accumulating reserves in excess of what a sensible degree of prudence requires.

Given the health of Bar Mutual's finances, the Board has decided that for the 2026/27 renewal it will collect less in premium from Members than what the rating schedule requires. Accordingly, contributions from all Members for the 2026/27 policy year will be called at 92.75% of the total contribution that would have been payable according to the rating schedule, i.e., a deferral of 7.5%.

Members will be aware that the premium deferral of 7.5% may be called at some later date in the event of unforeseen developments. Such an outcome is unlikely, however. Since it first provided a premium deferral for the 1999/2000 policy year Bar Mutual has never requested payment of the premium deferral from Members. The Board also has a policy of closing policy years and thereby waiving Bar Mutual's entitlement to the premium deferral once the final financial outcome on a year is reasonably clear.

The final matter to report on in relation to renewal at 1 April 2026 is the work undertaken by your Board concerning the categorisation of areas of practice. Following representations by one area of practice, the Board has agreed clearer guidance on the allocation of work to practice areas in the renewal documents and the "Allocation to Areas of Practice" form has been amended.

Terms of Cover

The following areas are worthy of mention in this Interim Report.

The first is the risk of claims arising from Members' use of Artificial Intelligence ("AI") tools. There is no express exclusion in Bar Mutual's Terms of Cover for Claims or the cost of defending Disciplinary Proceedings arising from inappropriate use of AI. But as this technology develops and its use becomes more ubiquitous, Members are encouraged to ensure that they adopt appropriate usage of the technology.

The second is the nature of run-off cover. Run-off insurance to a limit of £0.5m is provided free of charge to all Members who cease being Active Members and become Retired Members. Members wishing to purchase limits of cover above £0.5m can do so by paying an additional premium. In the course of the current policy year, it emerged

that there is sometimes confusion about the operation of run-off cover. This type of cover provides Members with an indemnity for claims notified during the currency of the run-off policy for work done before they ceased practice. Members cannot rely on the run-off cover to protect them against claims made for work done after they have retired from practice at the self-employed Bar. Further, if a claim is made after retirement and during the run-off period, it is the limit applicable for that period which will apply to the claim, hence why it is sensible to consider the modest fee for increased run-off cover limits.

The third is that Members can endeavour to control their financial exposure to their clients by including clauses in their contracts of service that seek to impose a financial cap on their liabilities. Discussions are ongoing with the Bar Council in relation to the use of limitation of liability clauses by self-employed barristers. These clauses are widely used by a host of professional advisors and indeed many sectors of the Bar (with varying degrees of success). Bar Mutual's discussions with the Bar Council have centred around the option of introducing standard optional limitation of liability clauses in the Bar Council's standard contractual terms for the supply of legal services by Barristers.

Finally, in last year's Interim report Members were reminded of their continuing duties in relation to privilege and client confidentiality in connection with what they could properly disclose to Bar Mutual when making notifications to it. I can report that Bar Mutual is engaged in ongoing discussions with the Bar Council with a view to agreeing a contractual relaxation of the restrictions on what Members can properly disclose to Bar Mutual when notifying Bar Mutual of circumstances that could give rise to claims against them without breaching the continuing duty to preserve the confidentiality of their client's affairs and not to disclose privileged material.

Top Up Insurance

As Members will know, the policy provided by Bar Mutual and the Top Up underwriters is a "claims made" policy. What this means is that the relevant limit of indemnity is the limit in place when the claim (or circumstance) is first notified, which may not necessarily be the limit in place at the time the work being impugned was done. Accordingly, the limit of cover purchased will need to be sufficient to meet claims notified during the currency of the policy year *and* for claims made in that year but relating to work done in earlier years.

Given the impact of inflation on the cost of claims, and the recent trend for Members to now notify claims against them where the quantum plausibly exceeds £100m, it is plain that complying with the BSB Handbook's requirement that self-employed barristers have adequate insurance taking into account the nature of their practices (rC76(1)) requires a viable Top Up market providing insurance above Bar Mutual's limit of cover of £2.5m.

Members will readily see the force of the argument that, in order to ensure the availability of Top Up Cover, the practising Bar has to support the Top-Up market.

Repeating, therefore, the message communicated by my predecessors in past Interim Reports, I would encourage all Members whose current and past practice gives rise to the risk of claims exceeding £2.5m, to consider purchasing Top-Up Cover or increasing the amount of Top-Up cover they buy. Completing the relevant section of the Bar Mutual renewal form authorising Bar Mutual to communicate to TLO the information TLO requires to produce a quote for insurance in the layers above £2.5m initiates the process of purchasing Top-Up cover.

In making this recommendation, an understandable concern may be whether it is influenced by any commercial relationship with TLO. I can confirm that there is no such relationship. Bar Mutual and its Managers derive no benefit from Members purchasing Top-Up insurance or increasing the amount of Top-Up insurance they buy.

The simple point is that supporting the TLO facility increases the prospects of Top-Up cover at reasonable rates continuing to be available to all Members in future years.

David Scorey KC
Chair
January 2026