

## CHAIRMAN'S STATEMENT

I am pleased to begin this report by informing Members that Bar Mutual remains in sound financial health and, subject to the performance of its investment portfolio and unexpected movements in its claims experience, is on course to record a surplus for the financial year ending on 31 March 2014.

During the course of 2013 the Board undertook fundamental reviews of Bar Mutual's Investment Policy and Free Reserves Policy, both of which involved considerable time and effort from Directors themselves and the input of the Managers and external advisers.

After starting with no assets at all in 1988, Bar Mutual now holds investments totalling £63m, due in large part to the sensible stewardship of the members of the Investment Committee and the Investment Manager over the years. It is from these assets that Bar Mutual meets the claims liabilities of Members and the expenses needed to administer an insurance business in an ever-increasingly regulated environment.

The key objectives of the new Investment Policy adopted by the Board at its December 2013 meeting are, first, the maintenance of sufficient funds to meet Bar Mutual's known claims liabilities and its regulatory capital requirements and, second, the preservation of capital in real terms by reference to CPI inflation over a timeframe of three to five years. Members will appreciate that, even with the assistance of expert investment managers, the Investment Committee's task in reviewing the investment manager's annual investment strategy and monitoring its implementation is both very important and time-consuming, so (on their behalf and that of the remainder of the Board) I thank David Wolfson QC and the other members of the Committee for the time and effort they expend on overseeing the management of Bar Mutual's investment portfolio.

Bar Mutual's Free Reserves Policy had set out guidelines for the optimal level (and maximum and minimum limits) of capital held in excess of its claims liabilities. Having regard to the increasingly complicated and risk-sensitive nature of the regulatory capital requirements applicable to Bar Mutual, the Board asked the Reserves Committee to re-examine the Policy. Led by Michael Brindle QC and with the assistance of actuarial advice, the Committee recommended to the Board a new Capital Resources Policy that would require Bar Mutual to hold a "buffer" of capital in excess of the level of capital that its regulator, the Prudential Regulation Authority, requires it to hold, the size of which would be determined with regard to the monetary value attributed to the various business risks faced by Bar Mutual. The Board agreed to adopt the new Policy at its December 2013 meeting. As it happens, Bar Mutual's capital resources as at 30 September 2013 were in line with their optimal target when calculated in accordance with the new Policy.

At its December 2013 meeting the Board also agreed the area of practice rates for the renewal for the forthcoming 2014 policy year. Apart from the two Revenue: Non-Crown areas of practice, all rates will be the same as for the current 2013 policy year. Following several years of renewal data that pointed to Revenue: Non-Crown: Contentious work posing no greater claims risk to Bar Mutual than normal commercial litigation, the rate for this area of practice has been reduced from 1.5% to 0.9%.

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However, following further deterioration in the performance of Revenue: Non-Crown: Non-Contentious, the Board decided it was necessary to increase its rate from 5.5% to 6.0%. This decision was not taken lightly, but the Board felt compelled to increase the rate in order to ensure that the premium paid by those undertaking tax planning and advisory work more closely approximated the risk to Bar Mutual to which that work gives rise. The Board also agreed to maintain the premium deferral at 20%, but asked the Rating and Reinsurance Committee to review its operation prior to the 2015 renewal.

As we approach the forthcoming renewal for 2014, there are three matters which I would like to draw to the attention of Members. The first is the necessity of purchasing a level of insurance cover that realistically reflects the potential size of claims to which your practice may give rise. As has been said many times previously, the risk, and consequences, of underinsurance are very real. At a recent meeting of the Claims Committee, for instance, approximately half of the significant cases reported by the Managers were ones where the Member's level of cover was substantially less than the amount claimed against him or her, whether within the Bar Mutual primary layer of cover or in excess of it. I would remind all Members that the price of increasing your level of cover within the Bar Mutual layer is only £100 per £500,000. In addition, the contact details for the two brokers that arrange excess layer cover (up to a total of £150m plus defence costs) will once again be included on the renewal form you will receive in the near future. I urge all Members to consider carefully the amount of cover they purchase when completing their renewal form.

The second is the scope of Bar Mutual cover for contractual liabilities. Following discussions with several of the specialist Bar Associations, the Board have further amended clause 3.1(x) of the Terms of Cover to clarify the extent of this cover. The new edition of the Terms of Cover can be found on the Bar Mutual website (see <http://www.barmutual.co.uk/downloads/>). It is very important that Members and their clerks should consult the Guidance Note on the Bar Mutual website (which has been updated in light of the further amendment to the Terms of Cover) if they continue to have concerns or queries relating to contractual terms proposed by instructing solicitors.

The third matter is the change to the Bar Code of Conduct to permit self-employed barristers to conduct litigation, provided they have been accredited to do so. Members will be automatically covered by Bar Mutual for claims arising from conducting litigation. At present Bar Mutual will not require Members who obtain this accreditation to pay an additional premium. However, having regard to the likelihood that the conduct of litigation will give rise to claims risks to which Bar Mutual has not been exposed previously and that these risks may well be magnified by the decision of the Court of Appeal in *Mitchell v News Group Newspapers Ltd*, the Board will be paying close attention to this issue. Members considering seeking the right to conduct litigation will need to reflect carefully on the various risk management measures that they will need to take in order to reduce (i) the danger of their clients' interests being harmed by administrative oversights and (ii) the incidence of claims against them that would have to be paid by Bar Mutual.

Finally, I am pleased to report that Jasbir Dhillon QC has recently joined the Board as a Director. His expertise in financial services will prove very valuable to the work of the Board.

**Colin Edelman QC**  
**Chairman**  
**January 2014**