

# Terms of Cover

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Effective as from 00.00 British Summer Time on 1 September 2010

# BAR MUTUAL

## 1 INSURING CLAUSE

- 1.1 Subject to the provisions of these Terms of Cover, Bar Mutual shall indemnify the Insured against any and all Claims which are first made against him during the Period of Insurance in respect of any and every description of Civil Liability whatsoever arising out of or in any way in connection with the Insured Practice whensoever and wheresoever the act or omission or other circumstances or event giving rise to such liability may have occurred.
- 1.2 Bar Mutual shall indemnify the Insured for claims by a solicitor for payment of all or part of the solicitor's fees under a conditional fee agreement between the Insured Member and that solicitor, only if and to the extent that:
- (i) the conditional fee agreement entered into by the Insured Member and the solicitor is in a form previously approved in writing by the Directors;
  - (ii) the claim arises under a clause in that agreement which the Directors have identified as giving rise to an obligation in respect of which the Insured is entitled to be indemnified by Bar Mutual; or
  - (iii) the Directors have resolved, and notified the Members in writing, that obligations under that clause are covered by Bar Mutual.

In giving their approval to any form of conditional fee agreement, the Directors shall be entitled to impose terms as to the maximum amount to be indemnified or such other terms as they, in their absolute discretion, think fit. The Directors may also withdraw such approval, or modify the terms upon which cover is given, provided always that not less than one month's notice of such withdrawal is given to the Members.

- 1.3 Bar Mutual shall indemnify the Insured against Defence Costs.
- 1.4 Notwithstanding anything to the contrary in these Terms of Cover, Bar Mutual, in its absolute and unfettered discretion and on such terms as it may think fit, may indemnify the Insured in respect of any Circumstance or Claim or any loss, costs or expenses (whether or not arising from or involving any Circumstance or Claim), notwithstanding that the Insured is not entitled to be indemnified by Bar Mutual in respect of the same and/or notwithstanding that the same may fall outside the scope of or within the exclusions contained in any insurance which is afforded to the Insured by virtue of these Terms of Cover.
- 1.5 Provided that they comply with the provisions of these Terms of Cover as if they were themselves the Insured, an Insured's personal representatives shall be entitled to be indemnified by Bar Mutual against all claims on the same terms and to the same extent as the Insured (if alive) would have been entitled to be indemnified under these Terms of Cover.

## 2 LIMIT OF INDEMNITY

- 2.1 Subject to the provisions of this clause, the liability of Bar Mutual shall be limited to:
- (i) the Limit of Cover, and in addition
  - (ii) Defence Costs.
- 2.2 If a sum in excess of the Limit of Cover has to be paid in order to dispose of any Claim, Bar Mutual's liability in respect of Defence Costs shall be in the same proportion as the Limit of Cover bears to the sum paid to dispose of the Claim. In the event of Bar Mutual having already indemnified the Insured in respect of Defence Costs, Bar Mutual shall be entitled to recover from the Insured such proportion of them as may exceed that proportion of the sum paid in order to dispose of the Claim as is represented by the Limit of Cover.
- 2.3 If a Claim becomes the subject of proceedings before any tribunal in the United States or Canada and is resolved (whether by judgment, settlement or otherwise) in accordance with the law of such jurisdiction, the additional cover afforded by clause 2.1(ii) shall not apply, and all Defence Costs shall be included within the Limit of Cover.

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- 2.4 The liability of Bar Mutual under these Terms of Cover shall exclude:
- (i) any award of punitive, exemplary or multiple damages by any tribunal in the United States or Canada;
  - (ii) any costs and expenses incurred without the prior consent of Bar Mutual;
  - (iii) any orders made by the Bar Standards Board or any successor regulator or any panel thereof under the Complaints Rules, the Summary Procedure Rules or the Adjudication Panel and Appeals Rules and/or any other rules of professional conduct applied to Self-Employed Barristers, or on appeal therefrom, for the payment of any fine or the repayment, remission, reduction, foregoing or cancellation of any fees in whole or in part.
- 2.5 The indemnity provided by Bar Mutual under these Terms of Cover may be provided in its absolute discretion in any one or any combination of the following ways:
- (i) by payment in or towards satisfaction of the Claim and/or claimant's costs to or to the order of the claimant making the Claim against the Insured;
  - (ii) by payment in respect of the Claim and/or claimant's costs and/or Defence Costs to or to the order of the Insured against whom the Claim is made;
  - (iii) by payment in or towards discharge of Defence Costs to or to the order of the legal advisers, adjusters or other persons by whom or in respect of whose services such costs and expenses were incurred.
- 2.6 If VAT is payable upon any element of the indemnity provided by Bar Mutual to any of the Insured who is registered for VAT, such VAT shall be paid and accounted for by such Insured and not by Bar Mutual.

## **3 EXCLUSIONS**

- 3.1 Any liability of Bar Mutual under these Terms of Cover for the following shall be excluded:
- (i) Claims or Disciplinary Proceedings for bodily injury or death unless arising out of the provision of Legal Services to a client by the Insured;
  - (ii) Claims or Disciplinary Proceedings for loss of or physical damage to property unless
    - (a) the property is property in the care of the Insured in connection with, but is not occupied or used by him for the purposes of, the Insured Practice, or
    - (b) the loss or physical damage arose out of the provision of Legal Services to a client by the Insured;
  - (iii) Claims or Disciplinary Proceedings arising out of any fraudulent or malicious act or omission on the part of the Insured, save that Bar Mutual shall indemnify the Insured against Claims arising out of any fraudulent or malicious act on the part of his servant or agent for which he is liable in law provided that the Insured establishes to the reasonable satisfaction of Bar Mutual that he was not aware of and had no involvement in the fraudulent or malicious act;
  - (iv) Claims or Disciplinary Proceedings against which the Insured is entitled to be indemnified under any other insurance, but only to the extent that he is entitled to be and is so indemnified;
  - (v) Claims or Disciplinary Proceedings arising out of any breach of any duty owed by the Insured as an employer to an employee, or as owner or occupier of any property;
  - (vi) Claims or Disciplinary Proceedings in respect of debts incurred by the Insured;

- (vii) Claims or Disciplinary Proceedings in respect of any loss or damage directly or indirectly caused by ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (viii) Claims or Disciplinary Proceedings arising out of any dispute between present or former members, pupils or Clerks of Chambers in respect of matters relating to or in any way connected with ownership, occupation, possession, management or administration of the Chambers or of any property used in or for the purposes of the Chambers or the Insured Practice;
- (ix) Claims or Disciplinary Proceedings in respect of any liability arising directly or indirectly out of any association (including partnership) entered into with any lawyer (whether as permitted under the Overseas Practice Rules in the Code of Conduct or otherwise), save to the extent that in the opinion of the Directors such liability results from the personal act or omission of the Insured and would otherwise fall within the provisions of these Terms of Cover;
- (x) Claims or Disciplinary Proceedings in respect of any liability incurred under any contract, save to the extent that such liability would have been incurred irrespective of the terms of such contract and would otherwise fall within the provisions of these Terms of Cover;
- (xi) Claims or Disciplinary Proceedings arising out of or in any way in connection with the supply of Legal Services as a Foreign Lawyer or European Lawyer, save to the extent specified in the Cover Note or any endorsement thereto;
- (xii) Claims or Disciplinary Proceedings arising out of or in any way in connection with the provision of Legal Services in a system of law and/or jurisdiction in which the Insured is not authorised to provide Legal Services by
  - (a) the Bar Council or any successor regulator to it; or
  - (b) any competent professional body; or
  - (c) any judicial or other body;
- (xiii) Claims or Disciplinary Proceedings against a Registered European Lawyer arising out of or in any way in connection with the provision of Legal Services as a European Lawyer before he became a Registered European Lawyer, save to the extent specified in the Cover Note or any endorsement thereto;
- (xiv) Claims or Disciplinary Proceedings arising out of or in any way connected with failure to comply with the Continuing Professional Development Regulations, the Practising Certificate Regulations, paragraph 204(b) of the Code of Conduct, paragraph 402.1 of the Code of Conduct or paragraph 402.2 of the Code of Conduct, including Disciplinary Proceedings for failing to respond to Disciplinary Proceedings for any of the foregoing.
- (xv) Claims or Disciplinary Proceedings arising out of any criminal offence committed or allegedly committed by the Insured or out of an enquiry conducted by Her Majesty's Revenue and Customs into the Insured's tax or VAT affairs.

## **4 AVOIDANCE, REPUDIATION, RESCISSION AND REIMBURSEMENT**

- 4.1 Subject to the provisions of these Terms of Cover, Bar Mutual shall not be entitled to avoid, repudiate or rescind any insurance or any liability thereunder to the Insured or to claim damages against the Insured on any grounds whatsoever, including misrepresentation, non-disclosure, or breach of condition or duty.
- 4.2 If an Insured
  - (i) has fraudulently misrepresented or fraudulently failed to disclose any material fact, or

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- (ii) notifies any Claim knowing it to be false or fraudulent,

Bar Mutual shall be entitled to claim damages and/or to avoid the insurance and/or to refuse to indemnify the Insured. In such event Bar Mutual may in its absolute discretion, notwithstanding any such avoidance of the insurance or refusal to indemnify, satisfy all or any part of any Claim made against the Insured responsible for such fraud (including the claimant's costs) by paying the same to the claimant. In such circumstances, Bar Mutual shall be entitled to recover any amount so paid from the Insured responsible for such fraud.

- 4.2 Where any misrepresentation or non-disclosure that does not otherwise entitle Bar Mutual to avoid the insurance has resulted in Bar Mutual effecting the insurance for a lower consideration than would have been the case if the correct and full facts had been disclosed, the Insured shall pay to Bar Mutual such additional contribution as Bar Mutual would reasonably have required if the correct and full facts had been disclosed to it.
- 4.3 Where any breach of these Terms of Cover has prejudiced Bar Mutual in its handling of any Claim against the Insured, the Insured responsible for such breach shall reimburse to Bar Mutual the difference between the sum paid by Bar Mutual in respect of the Claim and the sum which would have been payable in the absence of such prejudice.
- 4.4 Where in any Disciplinary Proceedings the Insured is sentenced to a suspension from practice for a period of in excess of three months or disbarment, Bar Mutual shall be entitled to recover from the Insured any costs and expenses incurred by Bar Mutual in defending the Disciplinary Proceedings and any sum paid to indemnify the Insured against any costs order made against him in any Disciplinary Proceedings.

## 5 NOTICE OF CLAIMS AND DISCIPLINARY PROCEEDINGS

- 5.1 The Insured shall give notice to Bar Mutual as soon as practicable of any
  - (i) Circumstance that may subsequently give rise to a Claim or Disciplinary Proceedings against him;
  - (ii) Claim that has been made against him;
  - (iii) Disciplinary Proceedings commenced against him.
- 5.2 Any Claim or Disciplinary Proceedings that arise from any Circumstance notified to Bar Mutual in accordance with sub-clause 5.1(i) shall be deemed to have been made or commenced during the Period of Insurance in which the notice of the Circumstance was given to Bar Mutual.
- 5.3 Where the Insured had been aware of any Circumstance, Claim or Disciplinary Proceedings prior to the expiry of a Period of Insurance and gives notice of it to Bar Mutual within 28 days of the inception of the Period of Insurance that immediately follows the expired Period of Insurance, Bar Mutual shall treat any such Circumstance, Claim or Disciplinary Proceedings as having been notified to it during the expired Period of Insurance.
- 5.4 The Insured shall forward every letter, claim form, application and process to Bar Mutual immediately upon receipt, and shall in all cases upon request give to Bar Mutual such further information and render such assistance as it may reasonably require.
- 5.5 All such notices shall be given and all such documents forwarded to Bar Mutual at the address given in the Cover Note or at such other address as may be notified to the Insured.

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## 6 CONDUCT AND SETTLEMENT OF CLAIMS AND DISCIPLINARY PROCEEDINGS

- 6.1 Bar Mutual shall be entitled to take over and conduct in the name of the Insured the defence of any Claim or Disciplinary Proceedings and shall be entitled to appoint such legal representatives to investigate and defend the Claim or Disciplinary Proceedings or, following the notification of a Circumstance pursuant to clause 5.1(i), any potential Claim or Disciplinary Proceedings as it considers appropriate. The Insured shall co-operate with, and provide all reasonable assistance to, Bar Mutual in connection with any Circumstance, Claim or Disciplinary Proceedings notified pursuant to clause 5.
- 6.2 Neither Bar Mutual nor the Insured shall be required to contest or continue to defend any Claim or Disciplinary Proceedings unless a Queen's Counsel (appointed by agreement or by the Chairman of the Bar Council in the absence of agreement) shall advise that, taking due account of the interests of both Bar Mutual and the Insured, such Claim or Disciplinary Proceedings should be contested or continue to be defended. Bar Mutual and the Insured shall agree to be bound by the opinion of the Queen's Counsel, which shall be treated as having been given as an expert and not as an arbitrator. Liability for the Queen's Counsel's fee for advising under this clause shall lie with the party against whose contention the Queen's Counsel advises.
- 6.3 The Insured shall not settle any claim for indemnity, contribution or recovery, nor surrender any right to the same, without the prior written consent of Bar Mutual. The Insured shall not admit liability for any Claim or incur any costs or expenses in connection therewith or incur any costs or expenses in connection with Disciplinary Proceedings without the prior written consent of Bar Mutual.
- 6.4 Subject to sub-clause 6.5, Bar Mutual shall take all reasonable steps to inform the Insured of any proposals for settlement and shall not admit liability for or settle any claim without the written consent of the Insured.
- 6.5 Bar Mutual shall be entitled to settle any claim without the prior written consent of the Insured if:
- (i) the Insured does not give written notice refusing his consent to a settlement recommended in writing by Bar Mutual within 28 days (or such shorter period as Bar Mutual may stipulate where the circumstances require) of the recommendation being sent to the Insured; or
  - (ii) it is not possible or permissible to obtain instructions from the Insured and where Bar Mutual believes in good faith that settlement is necessary to protect the interests of the Insured and/or Bar Mutual.
- 6.6 If the Insured refuses to consent to a settlement recommended in writing by Bar Mutual, Bar Mutual's liability in connection with the Claim shall not exceed the sum for which it could have been settled and the Defence Costs up to the date when such settlement could have been effected.
- 6.7 If the Insured offers to settle and/or settles any Claim, Bar Mutual shall be under no liability to indemnify him in respect of that offer and/or settlement or to pay any costs or expenses incurred in connection with the same, unless
- (i) Bar Mutual approves the settlement, or
  - (ii) (a) the Insured has notified Bar Mutual in writing of the proposed terms of settlement; and  
(b) Bar Mutual has given its written consent to the proposed terms of settlement or has failed within 28 days of receipt of the said notice to give written notice to the Insured objecting to the proposed terms of settlement.

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- 6.8 If any payment is made by Bar Mutual in respect of a Claim against the Insured, Bar Mutual will be subrogated to all rights of the Insured of indemnity, contribution or recovery to the extent of that payment.

## 7 DISPUTES AND GOVERNING LAW

Any difference or dispute (other than one arising pursuant to sub-clause 6.2) that may arise between Bar Mutual and the Insured out of or in connection with these Terms of Cover shall be referred to a sole agreed arbitrator (or in default of agreement to a sole arbitrator appointed by the Chairman of the Bar Council), whose decision shall be final and binding. English law shall govern any contract of insurance of which these Terms of Cover shall form part and any arbitration arising pursuant to this clause.

## 8 INTERPRETATION

In these Terms of Cover (and unless the context otherwise requires), the following expressions have the following meanings:

Ad Hoc Judge	Serving as an ad hoc judge or tribunal member in an international tribunal.
Arbitration	An arbitration, adjudication, expert determination, or early neutral evaluation.
Arbitrator	Serving in an Arbitration as: <ul style="list-style-type: none"><li>(i) an arbitrator or umpire; or</li><li>(ii) a concilio-arbitrator; or</li><li>(iii) an adjudicator; or</li><li>(iv) an expert determiner; or</li><li>(v) a neutral evaluator.</li></ul>
Bar Council	The General Council of the Bar of England and Wales.
Bar Mutual	Bar Mutual Indemnity Fund Limited.
Chambers	The place (as notified to the Bar Council pursuant to the Code of Conduct) at or from which a Self-Employed Barrister carries on his practice.
Circumstance	An incident, occurrence, fact, matter, act or omission that may give rise to a Claim or Disciplinary Proceedings.
Civil Liability	For the purposes of these Terms of Cover, Civil Liability includes: <ul style="list-style-type: none"><li>(i) any liability to pay wasted costs;</li><li>(ii) any liability to pay any costs order made against the Insured in Disciplinary Proceedings.</li></ul>
Claim	A demand for, or an assertion of a right to, civil compensation or civil damages or an intimation of an intention to seek such compensation or damages. For the purposes of these Terms of Cover, a demand for payment of any costs order made against the Insured in Disciplinary Proceedings shall be deemed to be a Claim.

Clerk	The clerk, junior clerks, and administrative and secretarial staff and any other person employed in the Chambers in connection with the Member's Insured Practice.
Code of Conduct	The Code of Conduct of the Bar of England and Wales, as amended from time to time by the Bar Standards Board.
Cover Note	The Cover Note issued by Bar Mutual in respect of any Period of Insurance, including where the context so requires a Cessation Cover Note, and any endorsement.
Deductible	The amount set out in the Cover Note for which the Insured shall be responsible to contribute towards any payment made by Bar Mutual in the defence or settlement of any claim or Disciplinary Proceedings.
Defence Costs	<p>Any costs or expenses incurred with the prior consent of Bar Mutual in any of the following situations:</p> <ul style="list-style-type: none"><li>(i) As regards a Circumstance notified under sub-clause 5.1(i):<ul style="list-style-type: none"><li>(a) in the investigation, defence and settlement of a potential Claim;</li><li>(b) in the investigation or defence of potential Disciplinary Proceedings;</li></ul></li><li>(ii) in the defence or settlement of any Claim;</li><li>(iii) in the conduct of any proceedings for indemnity, contribution or recovery relating to a Claim;</li><li>(iv) in the defence of any Disciplinary Proceedings;</li></ul> <p>provided that:</p> <ul style="list-style-type: none"><li>(i) any such Claim or potential Claim or any Claim to which any such Disciplinary Proceedings or potential Disciplinary Proceedings are capable of giving rise falls or would fall within the terms of clause 1.1; and</li><li>(ii) any such Claim or potential Claim or Disciplinary Proceedings or potential Disciplinary Proceedings are not excluded from cover by any of the exclusions under clause 3.1.</li></ul>
Directors	The Directors for the time being of Bar Mutual.
Disciplinary Proceedings	Any proceedings or charges brought or made against the Insured on or after 1 April 2007 alleging a breach of the Code of Conduct (including any appeals or judicial review proceedings arising out of them), the subject matter of which has given rise to a Claim in respect of civil compensation or civil damages which remains outstanding or is capable of giving rise to a Claim in respect of civil compensation or civil damages.
European Lawyer	As defined in the Code of Conduct.
Foreign Lawyer	As defined in the Code of Conduct.
Insured	<p>Each of the following persons:</p> <ul style="list-style-type: none"><li>(i) The Insured Member.</li><li>(ii) Any pupil of the Insured Member, but only in respect of work performed in practice whilst a pupil of the Insured Member.</li></ul>



- (iii) Any former pupil of the Insured Member who has not practised since completing that and any other pupillage, but only in respect of work performed in practice whilst a pupil of the Insured Member.
- (iv) Any Clerk, but only in respect of matters occurring whilst in employment as a Clerk in connection with the Insured Practice of the Insured Member, or with the Insured Practice of any pupil or former pupil of the Insured Member to the extent and within the limits insured under paragraphs (ii) and (iii) above.

Each of the Insured shall be severally insured by virtue of the issue of a Cover Note to the Insured Member and shall for all purposes in connection with these Terms of Cover be treated as separately insured hereunder as if under a separate insurance, so that (for example) no act or omission (including fraud) on the part of any one or more of the Insured shall prejudice the rights of or adversely affect any other(s) of the Insured or in any way derogate from the cover granted to any other(s) of the Insured.

Insured Member	A Member or former Member of Bar Mutual to or in respect of whom a Cover Note has been issued for the relevant Period of Insurance.
Insured Practice	<ul style="list-style-type: none"><li>(i) The supply of Legal Services as a Self-Employed Barrister or Registered European Lawyer;</li><li>(ii) where specified in the Cover Note or any endorsement thereto and subject to any additional terms and conditions specified therein, the supply of Legal Services as a Foreign Lawyer or European Lawyer in any jurisdiction;</li><li>(iii) acting as an Arbitrator;</li><li>(iv) acting as a Mediator;</li><li>(v) acting as a Legal Secretary;</li><li>(vi) acting as an Ad Hoc Judge;</li><li>(viii) employment and voluntary work at the Bar Pro Bono Unit or at a law centre or legal advice centre or in relation to, or as honorary legal adviser to, a charity or other Voluntary Association;</li><li>(ix) membership of any disciplinary tribunal or investigation committee;</li><li>(x) acting as an expert on matters of English law, European Union law, public international law, the law relating to international arbitration, or transnational law anywhere in the world;</li><li>(xi) any other practices and occupations as may be specified in the Cover Note or in any endorsement thereto.</li></ul>
Legal Secretary	Serving as a legal secretary or assistant to an Arbitrator, Mediator or a domestic or international tribunal.

Legal Services	<p>Legal advice representation and drafting or settling any statement of case witness statement affidavit or other legal document but does not include:</p> <ul style="list-style-type: none"><li>(i) lecturing in or teaching law or writing or editing law books articles or reports;</li><li>(ii) examining free of charge newspapers, periodicals, books, scripts and other publications for libel, breach of copyright, contempt of court and the like;</li><li>(iii) communicating to or in the press or any other media;</li><li>(iv) exercising the powers of a commissioner for oaths;</li><li>(v) giving advice on legal matters free to a friend or;</li><li>(vi) in relation to a barrister or Registered European Lawyer who is a director of a company or a trustee or governor of a charitable benevolent or philanthropic institution or a trustee of any private trust, giving to the other directors trustees or governors the benefit of his learning and experience on matters of general legal principle applicable to the affairs of the company institution or trust.</li></ul>
Limit of Cover	<p>The sum of £500,000 each and every Claim or Disciplinary Proceedings, or such other sum or sums (if any) as may be set out in the Cover Note in excess of the Deductible provided that only one Limit of Cover shall apply to all Claims and Disciplinary Proceedings which in the reasonable opinion of the Directors arise from or are attributable to</p> <ul style="list-style-type: none"><li>(i) the same act or omission; or</li><li>(ii) a series or group of related acts or omissions; or</li><li>(iii) a series or group of similar acts or omissions; or</li><li>(iv) the same originating cause.</li></ul>
Mediation	A mediation or conciliation.
Mediator	Serving as a mediator or conciliator in a Mediation.
Member	A person who is entitled to membership of Bar Mutual pursuant to Rule 1 of the Bar Mutual Rules.
Period of Insurance	The period (all dates inclusive) specified in the Cover Note.
Registered European Lawyer	A European Lawyer registered as such by the Bar Council and by an Inn pursuant to a direction of the Joint Regulations Committee under Regulation 30 of the Consolidated Regulations and who supplies Legal Services from Chambers in England and Wales or as a sole practitioner in England and Wales and who (for the avoidance of any possible doubt) is not employed to supply Legal Services under a contract of employment or by virtue of an office under the Crown or in the institutions of the European Union.
Self-Employed Barrister	A barrister in independent practice as defined by the Code of Conduct.
Voluntary Association	A body the activities of which are carried on otherwise than for profit, but does not include any public or local authority.