

CHAIR'S INTERIM REPORT – JANUARY 2023

This is my first Interim Report as Chair of Bar Mutual. As Colin Edelman noted in Bar Mutual's annual report and financial statements to 31 March 2022, I was recommended as his successor by the Board's Nominations Committee. I was elected as Chair at the Annual General Meeting in October 2022. I am acutely conscious of both the responsibility and the privilege of serving in this role as I take over as Chair.

Before I come to the normal business of the Interim Report, I must first record my gratitude to Colin for his dedication as a Director of Bar Mutual from 2007, and his extraordinary stewardship and wisdom as the Chair of the Board since 2013. The current and past directors and I are enormously grateful for his tireless enthusiasm and expertise. The membership as a whole is indebted to him for his outstanding and selfless contribution to the continuing success of Bar Mutual.

In his time as Chair, Colin succeeded in strengthening the financial position of Bar Mutual and ensuring that it continued to meet the requirements of its Members. On his appointment as Chair in 2013, Bar Mutual's total assets were a shade below £72m. By the time of his retirement in July 2022, the total assets had grown to £108m. In this period Bar Mutual returned – through its annual premium deferral – a total of £33m to its Members, £11m of which is now a permanent premium saving to them.

But his contribution was not limited to cementing Bar Mutual's financial strength. He also took the lead in ensuring that the insurance provided by Bar Mutual adapted to the changing needs of its Members. This included positioning Bar Mutual to provide professional indemnity insurance to BSB authorised and licensed bodies; and securing the availability of a limited indemnity for purely contractual liabilities following the introduction of standard contractual terms by the Commercial Bar Association.

The contractual terms of cover offered by Bar Mutual were also honed to meet its Members' evolving practices. Junior members of the self-employed Bar eager to obtain fresh insights into the operations of lay and professional clients, and with a view to developing their practices, were covered for a limited period of secondment. Employed barristers eager to contribute to the rule of law by providing pro-bono advice to the public but unable to do so because their employer did not cover them for professional indemnity claims, could do so when Bar Mutual extended its cover to insure them for providing pro-bono legal services through FRU or Advocate.

These and his numerous other achievements amply underscore that, in his time as a Director and as Chair, Colin contributed indefatigably to meeting the twin objectives on which Bar Mutual was founded when it commenced operations on 1 April 1988. In the tradition of his predecessors – Piers Ashworth KC, Sir Richard Aikens and Justin Fenwick KC – he has ensured that the self-employed Bar continues to control its own insurance and that Bar Mutual provides certainty and stability to its Members.

Bar Mutual's Financial Position

In common with most companies holding investments, Bar Mutual experienced a substantial fall in the market value of its investments as a result of the twin challenges of roaring inflation and the government's 23 September "fiscal event". At the time of writing this interim report the capital loss on our investments is approximately £4m. Our current forecast is that this capital loss will reduce to about £3m by close of the financial year, although there remains substantial uncertainty about this. As Colin has

reported in previous Chair's statements, the Board deliberately sets a conservative investment policy, which limits the amount of Bar Mutual's funds that can be invested in risky assets. Nonetheless, the current investment climate is both volatile and extremely challenging. Members can, however, be assured that the relevant committees of the Board are working closely with the Investment Managers to monitor investment performance in this very unusual period. I must record my particular thanks to Sharif Shivji KC and Jasbir Dhillon KC, who chair the committees most directly involved in this work.

Bar Mutual's current IT system has served it well for over 20 years. However, it is now aged, and an IT system of this vintage generates risks. The technology it uses is increasingly unsupported, and there is therefore a growing risk of a system and other failures. In view of this the Board has decided to replace Bar Mutual's IT system, and about half of the expenditure will be incurred in the period to 31 March 2023.

Despite forecasting an investment loss of £3m and IT expenditure of £0.5m on the new IT system, Bar Mutual remains in a robust overall financial position. The forecast for the financial year to 31 March 2023 is a small profit of £0.2m. Bar Mutual's premium income in 2022/23 was boosted by growth in fee income to the Bar as a whole and, fortunately, our claims experience has so far been relatively benign in relation to recent policy years.

The underlying strength of Bar Mutual is also evident in the forecast capital position to 31 March 2023. Bar Mutual is required to hold 100% of the regulatory Solvency Capital Requirement ("SCR") prescribed by the Prudential Regulation Authority. Bar Mutual's capital amply exceeds this measure. The forecast Tier 1 regulatory capital (the amount of assets held in excess of Bar Mutual's liabilities) is forecast to be £41.0m against a forecast SCR of £25.6m, resulting in a ratio of regulatory capital to SCR of 160%. In order to ensure Bar Mutual's capital always sits above its SCR, the Board has agreed a risk appetite for capital that results in an additional buffer above the SCR. This policy requires Bar Mutual to maintain Tier 1 capital between a lower and upper target level. The forecast lower target level for capital is £37.7m (that is £12.2m above the SCR). Bar Mutual is forecast to exceed this lower target by £3.2m.

Furthermore, during the course of this financial year, the Prudential Regulation Authority approved Bar Mutual's reapplication to recognise a portion of its total available deferred premiums as Tier 2 regulatory capital, following the expiry of the current approval. This increases Bar Mutual's forecast total regulatory capital as at 31 March 2023 to £53.4m and hence the forecast ratio of regulatory capital to SCR to 209%. This provides additional certainty that Bar Mutual will be able to meet its SCR in the event of adverse experience and hence provides time for Bar Mutual to take action to restore its Tier 1 capital position as appropriate, if necessary.

Rates for the 2023/24 Policy Year Renewal and the Premium Deferral

The process for setting the rates for any policy year begins with a report by our Managers' in-house actuaries following the half-yearly review of the claims reserves. This report is then considered by the Reserves Committee, whose terms of reference require it to provide guidance to the Rating and Reinsurance Committee on Bar Mutual's income requirements for the upcoming policy year.

The forecast capital position for the 2022/23 financial year end did not, this year, result in the Reserves Committee having to recommend any measures to increase Bar Mutual's capital.

The work of the Rating and Reinsurance Committee was, therefore, limited this year to considering whether the updated notional rates for each area of practice was commensurate with the rates currently charged for them.

Following the Board's consideration of the rating changes recommended by the Rating and Reinsurance Committee, there are increases to the rates charged for 9 areas of practice and reductions for 3 areas of practice.

The rates for the following areas of practice have been increased.

Area of Practice	Rate for 2022/23	Rate for 2023/24
Professional Discipline	0.50%	0.60%
Revenue: Non-Crown: Contentious	0.50%	0.60%
Employment	0.80%	1.00%
Personal Injury	1.00%	1.10%
Insolvency	1.00%	1.10%
Landlord & Tenant: Residential	1.30%	1.35%
Family: Other	1.30%	1.50%
Chancery: Contentious	1.50%	1.60%
Other	2.00%	2.25%

The rates for the following areas of practice have been reduced.

Area of Practice	Rate for 2022/23	Rate for 2023/24
Licensing	0.50%	0.35%
Chancery: Non-Contentious	2.50%	2.25%
Revenue: Non-Crown: Non-Contentious	8.50%	6.50%

In his Interim Report this time last year Colin explained that the claims experience on the 2019/20 policy year had been unusually high. This year, although the later policy years appear to be reasonably benign, some of the early policy years (2019/20 and earlier), in particular the 2018/19 policy year, have continued to deteriorate. The uncertainty about the final outcome of some of the early policy years, the poor performance of Bar Mutual's investments, and the risk that the cost of renewing Bar Mutual's reinsurance programme for the 2023/24 policy year may exceed the current forecast, persuaded the Board that it should not apply a premium deferral for the 2023/24 policy year. As Colin noted last year, Bar Mutual's ability to continue meeting its founding principles can only be secured if, as an insurance company, it sits on a solid financial base.

As has been the practice now for many years, the Board agreed at its December 2022 meeting to waive Bar Mutual's entitlement to call for payment of the premium deferral provided to Members for the 2016/17 policy year, and to make any supplementary calls on that policy year. The amount of the premium deferral was £3.814m.

Top-up Cover and Limit of Insurance

Members who purchase insurance above the £2.5m limit of cover provided by Bar Mutual will know that, since the 2021/22 renewal, there has only been one provider of excess layers insurance for the self-employed Bar, namely TLO Risk Services Ltd. For Members whose practices expose them to the risk of large claims, purchasing this insurance, and therefore its availability, is an important element of protection against financial loss. It remains the case that approximately one-third of the total number of Members purchasing a limit of cover of £2.5m with Bar Mutual do not go on to obtain

any excess layer insurance. As was noted last year, it is in the interest of all Members who currently purchase excess layer insurance (and those who will do so sometime in the future) for excess layer underwriters to continue offering cover. I would 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 doing so by completing question 2.8B of the renewal form. This will authorise Bar Mutual to communicate to TLO the information they require to produce a quote for insurance in the layers above £2.5m.

Members may have developed a habit of skipping over my predecessor's plea that they ensure that the limit of insurance they purchase for the primary and excess layers is sufficient to protect them from claims that their practices might generate. In addition to the regulatory requirement for Members to have adequate insurance to cover all legal services they provide to the public, having regard to the nature of their practices, dealing with a claim for which there is inadequate insurance is a miserable experience for the individual concerned and can be career-ending. When considering what limit of cover to buy, I remind Members that their Bar Mutual and excess layers cover is written on a "claims made" basis. It follows that 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. And their past practices may be capable of giving rise to claims with substantially higher quantum than their current practice, especially in the case of barristers who are winding-down their practices in preparation for or who are in retirement.

The Board

In closing this Interim Report, I must also note the upcoming retirement of another long-serving member of the Board, David Railton. He will be retiring from the Board in March 2023 after 13 years of immeasurable service to Bar Mutual. I am especially grateful to David for his decision to remain on the Board for longer than he originally intended in order to help me in my first months as Chair. It is incontestable that, following Colin's retirement, both the Board and I have reaped the benefit of his experience and continued wise counsel. I will have more to say in my Chair's end of year report, but I want to thank David in this Interim Report for his enormous contribution to the work of Bar Mutual. Having joined the Board in early 2010, he has acted as a Deputy Chair of the Board and past Chair of the Audit and Risk Committee and the Management Fee and Oversight Committee.

Finally, I am looking forward to continuing to work with my fellow Directors and the Managers to ensure that Bar Mutual meets its founding objectives in the insurance it provides to its Members.

Rebecca Sabben-Clare KC
Chair
January 2023