

BAR STANDARDS BOARD

REGULATING BARRISTERS

Proposed rule change concerning Professional Indemnity Insurance for BSB-regulated single-person authorised bodies

February 2019

As you are one of our regulated single-person authorised bodies, I am writing to seek your views on our proposal to change our rules regarding professional indemnity insurance. If adopted, the change would require all single-person authorised bodies – sometimes referred to as ‘single-person entities’ – to obtain their insurance from the Bar Mutual Indemnity Fund. At present, our rule does not stipulate who must provide the insurance as long as it meets minimum terms of cover.

The reason we are proposing this change is to enhance the long-term sustainability of the provision of insurance to single-person authorised bodies.

Having your say on this important matter need only take a few minutes of your time, so please do respond to the questions below. We are especially keen to know your thoughts on the first two questions in Box A below. Thank you.

Background

1. All those regulated by the BSB are required to have adequate professional indemnity insurance (Handbook rule rC76). However, the details vary as follows:

- self-employed barristers are required to insure with the Bar Mutual Indemnity Fund (BMIF);
- BSB entities are not currently required to insure with the BMIF; instead they are required to obtain insurance which meets the Minimum Terms of Cover specified by the BSB in accordance with rC76.¹

2. BSB-regulated entities can be divided into **authorised bodies** and **licensed bodies** (the latter are also known as Alternative Business Structures)². This letter only concerns authorised bodies, which can be further divided into single-person and multi-person bodies. In respect of the requirement to become a member of BMIF, a **single person authorised body (SPAB)** is a BSB authorised body which is a limited liability company or a limited liability partnership that has a single fee earner. (For the avoidance of doubt, a SPAB may have more than one employee but it can only have a single fee earner.)

¹ https://www.barstandardsboard.org.uk/media/1657322/bar_standards_board_-_minimum_terms_of_entity_cover_-_spring_2015.pdf

² See also: https://www.barstandardsboard.org.uk/media/1668991/entity_regulation_policy_statement.pdf

In other words, a single-person authorised body (SPAB) is a body, not a self-employed barrister, nor a set of chambers, containing only one individual who is authorised to undertake reserved legal activities (whether that individual is authorised by the BSB or another legal regulator).

BMIF's current policy is to offer primary layer insurance³ to all SPABs which approach it, and to insure other (multi-person) authorised bodies on a case-by-case basis. The BSB currently authorises 96 entities in total, of which 79 are SPABs. Almost all of the SPABs currently choose to obtain their primary layer insurance from BMIF.

Proposal

3. The BSB is considering applying to the Legal Services Board to change the BSB Handbook to require SPABs (but not multi-person authorised bodies) to be members of BMIF, ie to obtain their primary layer insurance from BMIF.

Consultation

4. We considered this topic during the summer of 2017, but as we are now proposing a rule change we believe it is appropriate to consult entities again. Therefore, we welcome your views on this proposal in general, and also on some specific points. The questions in Box A are key, but we would be interested in your responses to the other more detailed questions too.

A	Is having a choice of insurer for your primary layer cover important to you? What would your reaction be if our rules changed to mandate you to insure with BMIF?
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B	If you are currently insured by BMIF, why did you choose them? Did you consider alternative insurers for your primary layer cover? Have you been insured by BMIF for the whole period that your entity has been authorised? If not, what was your reason for changing to BMIF? What would you do if BMIF withdrew from the market for entity insurance?
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³ ie the minimum level of cover which all barristers need, up to a maximum of £2,500,000 depending on the premium paid; barristers who need higher levels of cover ('top-up' cover) buy it from other insurers.

C	<p>If you are currently insured by another insurer, why did you choose them?</p> <p>Did you consider BMIF for your primary layer cover?</p> <p>Have you been insured by non-BMIF insurers for the whole period that your entity has been authorised?</p> <p>If not, what was your reason for changing from BMIF?</p> <p>If you have always had non-BMIF insurers as an entity, have you been insured by the same insurer for the whole period?</p> <p>If so, why haven't you changed insurer?</p> <p>If not, why did you change insurer?</p>
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D	<p>What has been your experience of using your current insurer? (Eg level of satisfaction.)</p>
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E	<p>If your entity, or the authorised individuals it contains, has previously been authorised by a different regulator, what part did insurance arrangements play in your decision to apply to the BSB:</p> <p style="text-align: center;">none / small / some / a great deal?</p> <p>Please explain.</p>
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F	<p>If you are considering moving from being regulated by the BSB to another regulator, what part do insurance arrangements play in your consideration:</p> <p style="text-align: center;">none / small / some / a great deal?</p> <p>If our proposed rule change goes ahead and it becomes compulsory for SPABs to insure with BMIF, will that change your consideration?</p> <p>Please explain.</p>
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G	<p>Do you have any other comments on professional indemnity insurance that you wish to make?</p>
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H	<p>If you are willing to be contacted by the BSB if we have further questions, please provide contact details.</p> <p><i>We do not intend to publish individual responses or the list of those responding, but may publish aggregate information.</i></p>
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How to respond

5. Please can you reply by **22 March 2019** by email to ProfessionalStandards@BarStandardsBoard.org.uk.

Michael Jampel
Bar Standards Board
February 2019