



REGULATING BARRISTERS

Memorandum of Understanding
between
Bar Standards Board
and
Bar Mutual Indemnity Fund

April 2019

PURPOSE

1. The purpose of this Memorandum of Understanding (MoU) is to ensure appropriate regulatory oversight by the Bar Standards Board (BSB) of the provision of professional indemnity insurance (PII) to the Bar. To this end, the MoU provides a framework for consultation, co-operation and the sharing of information between the BSB and Bar Mutual Indemnity Fund Ltd (BMIF).
2. In recognition of the BSB's role in providing regulatory oversight of the PII requirements for barristers, and in particular the requirement in the BSB Handbook for all self-employed barristers to insure with BMIF, both the BSB and BMIF agree to act in good faith and in full accordance with the terms – and spirit – of this MoU. This acknowledges that a material change to BMIF's terms of cover could in practice be a change to the BSB's regulatory arrangements, as set out in the Legal Services Act 2007.¹

ROLES AND RESPONSIBILITIES

3. As the independent regulatory arm of the General Council of the Bar, the BSB regulates barristers called to the Bar in England and Wales in the public interest. The BSB discharges its regulatory functions subject to the requirements of the Legal Services Act 2007 and its constitution.
4. The primary role of the BSB is to regulate the Bar so as to promote high standards of practice and safeguard clients and the public interest. This is achieved by setting standards of entry to the profession and by ensuring that professional practice puts consumers first as far as is consistent with barristers' and authorised bodies' obligations under the BSB Handbook and their duty to the court.
5. The BSB's requirements in respect of PII are set out in the BSB Handbook: www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/. The requirements are intended to ensure adequate cover exists for any liabilities which BSB-regulated persons may incur to clients or to other parties when performing their legal services.

¹ The Act requires that any changes to regulatory arrangements must be approved by the Legal Services Board before they take effect.

6. BMIF is a company limited by guarantee that was incorporated in 1987 in order to provide comprehensive and affordable PII to the self-employed Bar, a task it has performed since 1 April 1988. Like any other insurance company incorporated in the UK, BMIF is subject to the regulatory jurisdiction of the Prudential Regulation Authority and the Financial Conduct Authority. Save for its Chief Executive Officer and Chief Financial Officers, all Directors of BMIF are non-executive and are practising self-employed barristers. All Directors of BMIF are subject to the usual legal duties imposed on company directors by English law, which include the duty to promote the success of BMIF for the collective benefit of its members. In addition, BMIF's directors must act within BMIF's powers (as contained in its Articles of Association and Rules). So far as it can do so consistent with its legal and other duties, BMIF will assist the BSB in meeting those of the BSB's regulatory objectives affected by its position as the provider of primary layer professional indemnity insurance to all self-employed barristers and the preponderance of entities (including alternative business structures) regulated by the BSB.
7. The day-to-day management of BMIF is currently contracted to Bar Mutual Management Company, a subsidiary of Thomas Miller Holdings Ltd.

PRINCIPLES

Notification and consultation

8. Save where it considers that an issue concerning the Terms of Cover requires immediate attention, BMIF shall give the BSB not less than six months' notice of any change to the terms of professional indemnity insurance (PII) cover offered to self-employed barristers. This should be in writing. In cases of urgency, BMIF shall give as much notice of any change to the terms of its PII cover as it reasonably can. BMIF shall not in any case change its terms so that they are less than the Minimum Terms of Cover as set from time to time by the BSB. If BMIF changes its Terms of Cover solely to reflect a change by the BSB to the Minimum Terms of Cover, there is no need to give notice, but BMIF shall inform the BSB in writing of the date when the change comes into effect.
9. BMIF shall give the BSB not less than 12 months' notice of any decision to cease providing PII to self-employed barristers.

10. The BSB shall give BMIF not less than 12 months' notice of any decision by the BSB to remove any requirement in the BSB Handbook to be insured with BMIF.
11. The BSB shall consult BMIF on any proposed changes to the BSB Handbook or the BSB's Minimum Terms of Cover which impact on BMIF or on the terms of PII cover provided by BMIF, and provide a reasonable period of time for the consultation. The BSB shall also give reasonable notice of any intention to amend or introduce new requirements in relation to PII for the Bar that might affect the terms of BMIF's policies and/or BMIF's position as the sole provider of primary layer PII to the self-employed Bar. Such notice shall not be given less than six months prior to the commencement of BMIF's next policy year (save where the BSB considers that an issue requires immediate attention).

Reporting and sharing of information

12. BMIF shall provide the BSB with an annual report covering BMIF's operations (the "Annual Report"). The report will be provided within two months of the end of each policy year, starting with the current 2018-2019 policy year, and will provide a general initial assessment of the policy year and include the following information:
 - i. the total number of notifications received during the most recent expired policy year and the last five policy years;
 - ii. a table showing the number of claims notified, by years of membership of BMIF² and by area of practice during the most recently expired policy year;
 - iii. the error alleged in notifications made in the most recent expired policy year, as recorded on BMIF's claims system;
 - iv. the number of notifications made in the most recent expired policy year that attach to run-off policies written by BMIF and to the last five policy years;
 - v. the outcome of claims (within broad categories³);
 - vi. payments made (within bands);
 - vii. key performance indicators of compliance with pre-action protocol (as sampled);
 - viii. the results of any customer (both barrister and specialist bar association) satisfaction surveys BMIF may have undertaken; and
 - ix. the actions BMIF has taken to assure itself that it remains efficient and effective.

² As a proxy for the number of years standing of the barrister.

³ Such as "claim rejected", "commercial settlement reached", "judgement in favour of claimant", "judgement in favour of insured person/BMIF".

13. This “state of the market” report shall also include the conclusions that BMIF draws from the above data, its view on broad trends in the market, and its view on possible emerging risks. These may be qualitative, and may include BMIF’s view on:
 - whether there are additional factors that may be influencing risk and that can be taken into account when setting premiums for individual barristers;
 - risks arising in specific practice areas or specialist bars;
 - on areas for additional monitoring of certain behaviours;
 - and/or themes for future professional development.
14. BSB and BMIF shall meet, at least annually to discuss the Annual Report.
15. On request, BMIF shall confirm whether an individual or entity is or is not insured with Bar Mutual – or has ever been insured with Bar Mutual.
16. The BSB may ask BMIF to supply such other information as might reasonably be required by the BSB in order to fulfil its regulatory objectives or statutory obligations. BMIF shall provide the information requested, provided it is permitted to do so under its Articles of Association, its Rules, and by law.

Co-operation

17. To the extent that it is appropriate and lawful for it to do so, BMIF will co-operate with the BSB so as to enable the BSB to discharge its regulatory functions.
18. BMIF shall notify the BSB of any late payment or non-payment of sums owed by an individual barrister or entity.
19. BMIF shall notify the BSB of any matter or circumstance that results in BMIF avoiding or purporting to avoid the insurance provided to any of its insureds in respect of any policy year on any grounds permitted under the Terms of Cover as amended from time to time.
20. Nothing in this MoU shall be taken as requiring any breach of statutory, regulatory, common law and other considerations, duties, obligations and constraints as they apply to the sharing and disclosure of information, including the Data Protection Act 1998 and the General Data Protection Regulations, the Human Rights Act 1998, and common law duties, including confidentiality and privacy.

POINTS OF CONTACT

21. Any questions or concerns about the operation of this MOU should be directed to the following designated individuals (correct as of the date of this MoU):

BSB

Ewen Macleod
Director of Strategy and Policy
EMacleod@BarStandardsBoard.org.uk

BMIF

Ahmed Salim
Chief Executive Officer
ahmed.salim@thomasmiller.com

REVIEW

22. This MoU will remain in force until terminated by either the BSB or BMIF.
23. The MoU will be reviewed on a regular basis, as agreed between the BSB and BMIF.
24. Any changes to this MoU must be agreed in writing.

COMMENCEMENT DATE

25. This revised MoU will come into force when signed by both the BSB and BMIF. (It supersedes the version which came into force in 2016.)

PUBLICATION

26. This MoU is a public document and may be published as the BSB and BMIF see fit.

SIGNATORIES

For BSB:



Name: Dr Vanessa Davies
Capacity: Director General, BSB

11 April 2019

Date:

For BMIF:



Name: Colin Edelman QC
Capacity: Chair, BMIF

12 April 2019

Date:

