

From: Marc Beaumont [<mailto:windsorchambers@icloud.com>]
Sent: 24 January 2015 18:06
To: James Meyrick
Subject: Re: Response to consultation on the Bar's insurance

Correction: The reference to Crawford should of course be against LeO, not BSB.

On 22 Jan 2015, at 11:12, Marc Beaumont <windsorchambers@icloud.com> wrote:

<Bar Mutual report Jan 2015.pdf>

Dear Mr Meyrick,

1. I expect that you have seen this attachment from Bar Mutual. It advances, *inter alia*, Bar Mutual's arguments for a monopoly and demands that such monopoly be made/continue to be made obligatory by the BSB. In a somewhat doom-laden prognostication, it even suggests that it might have to dissolve itself if it loses its monopoly.
2. However, it is silent on the question of cover for the defence of barristers' disciplinary proceedings. Its position on that is that such cover is in its gift and discretionary. If cover with Bar Mutual is compulsory, it is very wrong that Bar Mutual is able to regard part of that cover as merely discretionary. The Bar is thereby forced to have something that may well prove to be illusory and in my experience of many cases in which barristers have instructed me to act for them, DOES prove to be illusory.
3. If the Bar Mutual monopoly of the Bar's insurance is to continue, it is only fair that there should be full cover for the defence of all disciplinary investigations and prosecutions. Bar Mutual wishes to have it both ways: to enjoy a guaranteed income from 15,000 barristers, whilst not providing all of them with guaranteed cover for the defence of disciplinary investigations, as well as against civil claims.
4. There is another aspect: it is the BSB both deciding that cover should be obligatory and punishing people who do not buy it, but also the BSB that allows Bar Mutual to pick and choose which disciplinary cases it funds - these being cases brought by the BSB itself. The BSB thereby has a vested interest in forcing the Bar to insure with Bar Mutual, but in not forcing Bar Mutual to defend the BSB's own prosecutions. This situation cries out for outside intervention.
5. The growth of the Legal Ombudsman service and scheme is such that there should be full cover for the defence of *those* investigations too, which are often as complex as full-scale civil claims for damages. Again, Bar Mutual has all the benefit of the income of 15,000 barristers, without accepting any correlative duty to insure them against LeO investigations. It seeks all the benefit and none of the concomitant responsibility.
6. The LSB should therefore allow BMIF to continue as monopoly, but only on terms that it compulsorily funds the defence of ALL BSB and LeO investigations and prosecutions.
7. This being so, the *Insurance Companies (Legal Expenses Insurance) Regulations (1990)* confer on insured barristers a right to choose their own lawyer in all cases:

see <http://www.legislation.gov.uk/ukxi/1990/1159/made> Likewise, the UK's international obligations, which must be adhered to by public authorities such as the Bar Council, which supervises Bar Mutual, require this too:

see, <http://www.unrol.org/files/UNBasicPrinciplesontheRoleofLawyers.pdf>

8. However, Bar Mutual refuses to recognise any such right and, in numerous of my own cases since 2008, has denied my barrister clients such a right, or has vigorously and cynically attempted to do so. It has recently advanced arguments to FOS, that it is not regulated by FOS, when it plainly is, that it does not provide "insurance", when it plainly does, and that it can refuse to fund the instruction of leading law firms even at its own quite low rates, when that is absurd.

9. In conclusion:

(1) If Bar Mutual, as it asserts, wishes to remain viable with a guaranteed income from 15,000 barristers, that can only be done through compulsion which would normally be anti-competitive;

(2) But if Bar Mutual is to enjoy guaranteed income from 15,000 barristers, it must also guarantee those 15,000 barristers full cover for all BSB and LeO investigations and prosecutions;

(3) If it refuses to do that, then it should lose its monopoly, so that those of the 15,000 who wish to free up their income to buy more comprehensive insurance elsewhere, are able to do so - few barristers could afford to buy 2 lots of insurance;

(4) if there is no current market for such insurance, that is because the BSB, the Bar Council and Bar Mutual stifle competition with a classic, three-way monopoly arrangement - if there are potential purchasers of such insurance, the market will be stimulated;

(5) the current monopoly is insidiously in the BSB's interests, because whilst Bar Mutual is able to avoid obligatory cover for the defence of BSB investigations and prosecutions, it means that the BSB will rarely be opposed by a funded defence team in its investigations and prosecutions. The BSB has little interest in making compulsory a system of funding that will make it harder for the BSB to convict barristers;

(6) Recent abuses of process by the BSB make it highly desirable that there is strong, funded defence representation in all cases: see for example the extraordinary decision of the Court of Appeal in *McCarthy v BSB* 21.1.15. See too the LSB's own report on the BSB at para 7.2 of http://www.legalservicesboard.org.uk/projects/pdf/bsb_regulatory_standards_final.pdf

(7) The growth of the Legal Ombudsman scheme means barristers face dozens, if not hundreds, of investigations by LeO every year, but Bar Mutual arbitrarily refuses cover in some cases (i.e.: the case of my client, JS) and grants it in others that are almost identical: see the decision of the Administrative Court in *Crawford v BSB* <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2014/182.html&query=lincoln+and+crawford&method=boolean>

(8) Freedom of choice of lawyer, which is required by the UK's EU and international obligations, should be recognised and practised by Bar Mutual, or it should lose its monopoly to insurers who will properly comply with the law in this respect.

Yours sincerely,

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