

POLICY ON SHARING OF CHAMBERS

(amended on 28/3/2019)

A INTRODUCTION

1. The Cape Bar Housing Policy provides for the allocation of chambers to more than one member on the basis of a sharing arrangement between such members.
2. Any member of the Cape Bar may enter into a sharing arrangement with one or more other members in good standing, subject to the requirements and paragraph 2A below.
- 2A This sharing policy shall apply, only if no vacancies exist in the Scottish model chambers, subject to the discretion of the Housing Committee and the Cape Bar Council to approve sharing arrangements in exceptional circumstances when such vacancies exist. This paragraph shall not affect sharing arrangements which have been approved prior to the date of its introduction.

B SHARING ARRANGEMENTS

3. The sharing of chambers is subject thereto that members that intend to share must
 - (a) inform the Housing Committee, or the Cape Bar Council as the case may be, of their intention; and
 - (b) obtain approval from the Housing Committee, or the Cape Bar Council for such sharing; and
 - (c) where the chamber intended to be shared is advertised for allocation, the members must follow the process of applications for allocation of the chambers.
4. In relation to chambers advertised for allocation, the members that intend to share must jointly
 - (a) apply for the allocation of the chambers to them in accordance with the criteria for allocation in accordance with the existing practice;

- (b) inform the Housing Committee of the intended sharing arrangement in the application for allocation of the chambers; and
 - (c) confirm that their intended sharing arrangement is in compliance with the criteria for allocation, referred to below.
5. In relation to chambers already occupied by one member, the incoming member(s) that intend to share must jointly with the member in occupation
- (a) inform the Housing Committee of the intended sharing arrangement; and
 - (b) confirm that their intended sharing arrangement is in compliance with the criteria for allocation, referred to below;
 - (c) in the event of the intended sharing arrangement not being in compliance with this policy, the Housing Committee (i) may decline to allow the sharing, and/or (ii) may require that an arrangement be concluded in compliance with this policy; and/or, (iii) may propose requirements that must apply to the sharing arrangements, depending on the circumstances of the sharing.

C CRITERIA ON ALLOCATION OF SHARED CHAMBERS

6. The allocation of, and/or approval of allocated chambers for sharing, by the Housing Committee (or on appeal by the Bar Council or its Executive Committee), is subject to the consideration of the following criteria of the Housing Policy:
- (a) Transformation, by which is meant the need to promote the interests and numbers of black and female members of the Cape Bar;
 - (b) The comparative domestic and court seniority of the applicants;
 - (c) The achievement of a representative mix of senior and junior members on the floor in question;
 - (d) The financial implications of the decision for the sharing members concerned, and for the Cape Bar;
 - (e) If applicable, the views of the remaining member(s) of the suite concerned;
 - (f) If applicable, the views of the (a) other members of the group or floor concerned, and (b) other remaining member(s) of a chamber under a sharing arrangement; and

- (g) The practical arrangement for sharing between the members sharing must comply with the above criteria, and the Cape Bar Constitution in all respects.
7. The Housing committee (and, on appeal, the Bar Council or the Executive Committee) shall have the power to allocate chambers to more than one member, on the basis of a sharing arrangement between them.
 8. In any application for the allocation of chambers on a sharing basis, due consideration should be given, in addition to the criteria described above, to the practical arrangements between the members concerned regarding their co-operation as joint occupants of the particular chambers.
 9. The Housing Committee is vested with the discretion, where in the opinion of the Housing Committee the transformation objectives of the Bar can be promoted:
 - (a) to favour any applicant(s) in the category of 0-5 years of domestic seniority; and
 - (b) to override the seniority criteria.
 10. The Housing Committee must take cognisance of financial considerations, if any, for the intended sharing member(s) concerned, against the financial implications of the decision for the Cape Bar (including but not limited to the potential cost of vacant space to the Bar and the effect on other members), and whether or not other suitable vacant space subsidised by the Bar through Bar dues, is available.

Members in the category of 0-5 year seniority

11. Subject to the above considerations and the stated criteria, members in the category of 0-5 year seniority shall be as of right entitled to apply for sharing.
12. The permission to share obtained shall continue until one of the sharing members reaches the 5 year seniority mark, whereupon the members shall be required to re-apply for an extension of the permission to share under this policy.
13. When an application for extension of sharing is successful, the Housing Committee may allow a time period for the extended sharing in its discretion.

Members in the category above 5 years seniority

14. Subject to the above considerations and the stated criteria in Part B, members above 5 years seniority shall be required to show special circumstances why the application for sharing must be allowed.
15. When an application for sharing by members above 5 years seniority is successful, the Housing Committee may allow a time period for the extended sharing in its discretion.

D SHARED CONSULTATION FACILITIES

16. Any group of members sharing one or more chambers may apply for the allocation of a room as a consultation facility, subject to the above criteria and as provided for in this policy.
17. In promotion of the transformation objectives of the Bar, the Housing Committee, after consultation with the Cape Bar Council, may from time to time determine on application by sharing members that suitable shared consultation facilities be made available on a continuing basis at the cost of the Cape Bar, or as may be determined, at the cost of any group of members sharing a set of one or more chambers.

E LIABILITY AND TERMINATION

18. Each member sharing shall be liable for:
 - 18.1. the rental portion due by that member of the shared chamber to the landlord, but the member shall not be held jointly and severally liable for the rental portion(s) of the other sharing members(s), unless the landlord of the premises in question requires joint and several liability;
 - 18.2. payment of full floor dues payable by members of similar seniority within the group or floor, and floor dues shall be calculated on a per capita basis and not on a per chambers basis (unless agreed to by the sharing members with the group or floor, as the case may be).
19. A sharing arrangement shall endure until the relationship is terminated at the election of any one of the members on one month's notice.
20. On the termination of the sharing relationship between sharing members
 - 20.1. Each terminating member shall by written notice inform the Bar Council and the applicable landlord of the intended termination; and

- 20.2. Before taking up other chambers approved and/or allocated to that member
- (a) each terminating member shall be liable to pay all rental and floor dues owing by the member; and/or
 - (b) the member, if in default, must make suitable arrangements (to the satisfaction of the Housing Committee) for the payment of arrear rent and/or arrear floor dues, if any.
- 20.3. The notice of termination to the Bar Council must disclose any such arrears and the arrangements for payment made referred to in paragraph 20.2(b), if applicable.
- 20.4. Upon the exit of a member from a sharing arrangement, the shared room must be dealt with as follows:
- (a) the remaining member(s) may (i) elect to retain the room and bear the rental in full, or (ii) propose a new sharing member for allocation and such proposal must be advertised to allow other members to apply for sharing of the room, which will be subject to the preference of the remaining member(s),

(The remaining member(s) may express their views on the allocation of the vacant portion of the room to another incoming member as joint tenant. Should the remaining member(s) prefer an incoming member; this must be considered, subject to the criteria stated above.)
 - (b) the room must be advertised by the Bar Council for allocation, subject to a sharing arrangement, or
 - (c) the room must be advertised by the Bar Council for allocation as a room for allocation generally.
- 20.5. In the event of default by a sharing member, the remaining member(s) must report to the Housing Committee (on written notice to the defaulting sharing member) the default immediately; or within one month of the default occurring.
- 20.6. The defaulting sharing member thereafter must make suitable arrangements for the payment of arrear rent and/or arrear floor dues and report such arrangement, if any, to the Housing Committee. The Housing Committee may take such steps or make recommendations in such an event, as it may deem appropriate.

20.7. In the event of a defaulting sharing member vacating a room, the process in paragraph 20.4 above will apply.

F GENERAL

21. All provisions of the Cape Bar Housing Policy shall apply *mutatis mutandis*, subject to this Policy on Sharing.
22. The principle of ensuring cohesion of the Bar confirmed in the Transformation Programme must serve as the guiding principle underlying the policy on allocation of and/or the use of shared chambers. This policy is designed to promote transformation and to make entry to the Bar and practice more accessible to junior members.
23. No decisions taken in terms of this policy shall amount to creating precedents, and each matter must be determined with the relevant facts and circumstances prevailing at that time.

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