

Rule 8 – Fee sharing

Solicitors' Code of Conduct 2007

Professional Ethics

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Rule 8 – Fee sharing

Introduction

Rule 8 restricts the persons and businesses with whom or with which you can share your professional fees. Broadly, you may not share fees with a non-lawyer unless the fee sharing is with an employee or, in the case of overseas practice, a partner, or in the strictly defined circumstances set out in this rule. Its purpose is to protect your independence and professional judgement in these situations for the ultimate public benefit.

Rule 8 – Fee sharing

8.01 Fee sharing with lawyers and colleagues

Except as permitted under 8.02 below you may only share or agree to share your professional fees with the following persons:

- (a) practising members of legal professions covered by the Establishment Directive (other than a member of the English Bar practising in England and Wales);

- (b) practising members of other legal professions (other than a person who is struck off or suspended from the register of foreign lawyers);
- (c) bodies corporate wholly owned and directed by lawyers within (a) and (b) above for the purpose of practising law;
- (d) your partner as permitted by rule 12 (Framework of practice), your retired partner or predecessor, or the dependants or personal representatives of your deceased partner or predecessor;
- (e) in the case of a recognised body, a retired director, member or shareowner, or the dependants or personal representatives of a deceased director, member or shareowner;
- (f) your genuine employee (this does not allow you to disguise as “employment” what is in fact a partnership which rule 12 prohibits);
- (g) a body corporate through which you practise as permitted by rule 12;
- (h) your employer, if you are employed by a firm permitted under rule 12, or if you are practising in-house and acting in accordance with rule 13 (In-house practice) or 15.13 (In-house practice overseas);
- (i) a law centre or advice service operated by a charitable or similar non-commercial organisation if you are working as a volunteer and receive fees or costs from public funds or recovered from a third party; or
- (j) an estate agent who is your sub-agent for the sale of a property; or
- (k) a charity (as defined in rule 24 (Interpretation)), provided:
 - (i) you remain in compliance with 1.02 (Integrity), 1.03 (Independence) and 1.04 (Best interests of clients);
 - (ii) if requested by the Solicitors Regulation Authority to do so, you supply details of all agreements to share fees with a charity;
 - (iii) the operation of any such agreement does not result in a partnership;
 - (iv) any such agreement does not involve a breach of rule 9 (Referrals of business); and
 - (v) if you are employed in-house, you remain in compliance with 13.04 (Pro bono work).

8.02 Fee sharing with other non-lawyers

- (1) Except in relation to European cross-border practice, you may share your professional fees with another person or business (“the fee sharer”) if:
 - (a) the purpose of the fee sharing arrangement is solely to facilitate the introduction of capital and/or the provision of services to your firm;
 - (b) neither the fee sharing agreement nor the extent of the fees shared permits any fee sharer to influence or constrain your

- professional judgement in relation to the advice which you give to any client;
- (c) the operation of the agreement does not result in a partnership prohibited by rule 12 (Framework of practice);
 - (d) if requested by the Solicitors Regulation Authority to do so, you supply details of all agreements which you have made with fee sharers and the percentage of your firm's annual gross fees which has been paid to each fee sharer; and
 - (e) your fee sharing agreement does not involve a breach of rule 9 (Referrals of business) or 15.09 (Overseas practice – referrals of business).
- (2) "Fee sharer" means a person or business who or which shares your fees in reliance on (1) above and the expression includes any person or business connected to or associated with the fee sharer.

Guidance to rule 8 – Fee sharing

What is fee sharing?

1. Fee sharing is not defined in rule 8. It can have a variety of forms and includes relationships where you make a payment within a firm or to a third party by reference to a percentage of the fees charged to a client in respect of a particular case, or a percentage of your gross or net fees, or your profits.

Fee sharing with lawyers and colleagues

2. Sharing your fees within a firm, or with other lawyers, or in the other circumstances listed in 8.01, does not represent a serious risk to your independence and is therefore permitted.
3. Note that, subject to certain restrictions, you may practise outside England and Wales in partnership with non-lawyers – see rule 12 (Framework of practice). If you do, 8.01 allows you to share fees with your non-lawyer partners.

Fee sharing with charities and other non-lawyers

4. Subrule 8.01(k) permits you to share fees with a charity. This rule applies to charitable giving where you have agreed with your client or a charity that you will share all, or some, of your fees in respect of a particular matter or matters with a charity. This will include situations where you use a conditional fee agreement and agree to pay to a charity fees you receive by way of costs from your client's opponent or other third party. By contrast, where you decide to make a donation to a charity without any binding commitment to do so, this will not constitute fee sharing and is permitted.
5. If you act in accordance with a pro bono conditional fee agreement and you advance disbursements on behalf of your client, and these disbursements are received by way of costs from your client's opponent

or from another third party, you may retain from the costs which are received the element which covers such disbursements. The terms of this arrangement will need to be set out in the conditional fee agreement.

6. You may share your fees with other third party non-lawyers in the strictly defined circumstances set out in 8.02. The aim of 8.02 is to give practitioners greater freedom of choice as to the methods available to fund their firms or to pay for services provided to their firms, subject to safeguards designed to protect the public interest. Subrule 8.02 allows you to enter into agreements with third party non-lawyers which provide that, in return for the third party making available capital and/or a service to you, you make payment to the third party by reference to a percentage of your fees.
7. You must take account of the requirements of rule 1 (Core duties), specifically of the requirements of independence, integrity, and your duty to act in the best interests of the client. This means that although a fee sharer may properly require you to, for example, observe certain service delivery standards, it would be improper for the fee sharer to interfere with your professional judgement in relation to the advice given to clients.
8. If the fee sharing relationship involves referrals between you and the fee sharer, you must also comply with rule 9 (Referrals of business) or 15.09 (which relates to referrals of business overseas).
9. You must also comply with rule 12 (Framework of practice), which states that solicitors may practise in England and Wales in partnerships only with certain other lawyers, and with non-lawyers outside England and Wales only within strictly defined limits. Although fee sharing is an indicator of partnership, it is not the defining feature. Solicitors who do share fees in accordance with 8.02 should take care that they do not, even inadvertently, enter into an unauthorised partnership with the fee sharer.
10. You must comply with rule 3 (Conflict of interests) to ensure that there is no conflict between the interests of the client and your own interests by virtue of your agreement with the fee sharer. Should a fee sharer become your client, you should be particularly conscious of the need to ensure that conflicts of interests do not arise, and that the wish to avoid offending the fee sharer does not colour the actions taken and advice given in respect of other clients.
11. Subrule 8.02 allows you to share fees with a non-lawyer third party, but only in return for the fee sharer providing capital and/or services to your firm. The rule does not permit the fee sharer to provide services to your client as part of the fee sharing agreement.
12. Examples of the kind of arrangements which 8.02 permits include:
 - (a) A bank may provide a loan to your firm in return for a sum, in whole or part, calculated as a percentage of the gross fees of your firm. The fact that some clients of your firm are also customers of

the bank would not, of itself, prevent the bank from sharing your fees.

- (b) A supplier of information and communications technology may provide computer hardware, software, back-up and training to your firm in return for a share of the firm's gross fees.
 - (c) You may pay a supplier of an interactive web based will-writing package on the basis of a percentage of the fee for each will.
13. Although 8.02 does not specify any cap or limit on the amount of fees which you may share with third parties, you must ensure that the extent of the fees shared does not put at risk your duties to act independently and in clients' best interests – see rule 1 (Core duties). Firms should carry out an assessment of any risk to these core duties that could be created by any fee sharing arrangement, and take action to limit or manage that risk. In assessing whether a firm may have been in breach of these duties, particularly where the percentage of all fees shared is higher than 15% of gross fees, the Solicitors Regulation Authority may ask for evidence of this risk assessment.
14. If you have a fee sharing relationship with a third party non-lawyer in accordance with 8.02, you may need to disclose the existence and nature of the fee sharing relationship to any client whose affairs are significantly and directly connected to it. Service delivery standards agreed with a fee sharer need not normally be disclosed. See also 2.02(2)(e) and notes 16 and 17 of the guidance to rule 2 (Client relations).
15. There would, for example, be no obligation to disclose to clients that the firm has a fee sharing relationship with a bank which has supplied a loan to the firm, even to those clients who obtain banking services from that same bank.
16. Subrule 8.02 states that you must, if asked to do so, make available to the Solicitors Regulation Authority details of any fee sharing agreement. This may, for example, include the percentage of gross fees which has been passed to the fee sharer(s) pursuant to an agreement made under 8.02.
17. The Solicitors Regulation Authority will respect the commercial sensitivity of any information supplied to it.
18. You are not allowed to share fees with a non-lawyer "fee sharer" under 8.02 in your European cross-border activities, because it is prohibited by rule 16 (European cross-border practice). The following are prohibited by rule 16:
- (a) solicitors (wherever practising) sharing fees with a non-lawyer fee sharer situated in a CCBE state other than the UK; and
 - (b) solicitors practising in a CCBE state other than the UK sharing fees with a non-lawyer fee sharer (wherever situated).

Further information can be found in rule 16 (European cross-border practice) and notes 5 and 6 of the guidance to that rule.