

University of Leeds

Policy on Consultancy and Other External Work

Introduction

The University policy on consultancy and other external work has been updated following the approval by Council on 29th November 2012 to administer consultancy in academic faculties rather than through a centrally managed subsidiary company.

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Policy on Consultancy

Consultancy is defined as ‘the provision of expert advice, analysis and interpretation, which draws upon and applies the expertise and knowledge of University members of staff’¹.

It is unlike research in that it does not have as its prime purpose the generation of new knowledge.

The essential features of consultancy are:

- Consultancy is undertaken for an external client for financial return;
- Consultancy will produce some form of contracted output (but not typically formal intellectual property) which is usually owned by the client;
- The University normally does not have freedom to publish the results;
- Consultancy is typically governed by short-term contracts, makes minimal use of university resources and involves additional work for existing staff;
- University consultancy relates to an academics university appointment, i.e. it draws directly upon the academic knowledge and skills that are relevant to an employee’s University role.

Consultancy does not include activities undertaken on behalf of the University and covered elsewhere in contracts of employment, such as: -

- Research - Defined as a process of investigation leading to new insights, it includes work of direct relevance to the needs of commerce, industry, and to the public and voluntary sectors; scholarship; the invention and generation of ideas, images, performances, artefacts including design, where these lead to new or substantially improved insights; and the use of existing knowledge in experimental development to produce new or substantially improved materials, devices, products and processes, including design and construction.
- Teaching, Training or CPD.
- Occasional scholarly work that may involve payment of modest fees for short periods (e.g. participation in external assessment procedures such as QAA, REF, or external examining, course validation, book royalties and prizes, editing professional journals, media interviews, policy advice to government and related organizations).
- Measurement or Testing Services and Material transfers - Consultancy may involve a degree of measurement or testing and the transfer of materials, but is dependent on a high degree of intellectual input. Where clients do not require expert advice, analysis and interpretation the work will be classed as University fee-for-service work.
- External client access to University equipment/facilities.
- Other activities defined in a member of staff’s job description.

If a member of staff is uncertain whether any potential consultancy falls within the scope of scholarly work they should consult their Head of School in the first instance. If they are providing professional advice to outside bodies that may have legal implications then it would also be advisable to discuss this with their Head of School. If the duration of the work is not short then staff are advised to seek advice.

All consultancy commitments, whether University or private, are limited to 30 days in any financial year (1st August to 31st July) for each full time member of academic staff, pro rata for part time staff.

It is for faculties to decide if it is in the University’s interests to recognise consultancy and

other external work within the workload model.

Any private consultancy, as defined below, undertaken by an academic member of staff should not form part of any work measured by the workload model.

Non-academic members of staff require the approval of the Dean of Faculty (or nominee) or Vice-Chancellor's Executive Group member if the member of staff works in a service department. Approval should be sought in advance and for each consultancy contract.

The University encourages academic staff to undertake reasonable amounts of consultancy where appropriate to the discipline and where it does not interfere with the primary purpose of the Faculty and proposes that positive encouragement be provided.

The direct benefits arising from consultancy are considered to include: -

- Increasing the expertise and experience of University staff by involving them in 'real world' problems, thus enriching their teaching and research.
- Providing valuable services for local, regional and national organisations and hence contributing to economic and social development.
- Enhancing staff training and career development.
- Building links between the University and outside bodies which may subsequently help the University gain research contracts, place students for project work, recruit students for advanced or continuing professional education, generate case studies that might be suitable for REF submission and many other similar benefits.
- Enabling staff whose expertise has a commercial value to obtain additional financial benefit. .

Academic Staff wishing to undertake consultancy projects can do so by one of three means, these are: -

- **University consultancy** relates to the provision by University staff of remunerated expert advice or professional services that relate to their University appointment. University consultancy must be carried out using faculty based administration systems where the contractual relationship is between the client and the University. Only University consultancy provides a direct financial return to the Faculty/School in addition to the fees paid to the consultant.
- **Clinical private practice**, where clinical academic staff holding Honorary Consultant contracts within the National Health Service are permitted to engage in private practice subject to the extent of such practice being consistent with the overriding obligations of teaching, research and clinical service attaching to the holding of a full time post and to the approval of the relevant health authority.
- **Private consultancy**, where the individual acts entirely in a private capacity with no legal link to or liability on the University. No University resources may be used for this activity. Examples of such resources are equipment, IT equipment including PCs, telephone, space, University name, expertise and intellectual property (IP). University IP cannot be used in private consultancy. The University IPR Policy can be found at <http://www.leeds.ac.uk/research/hbook/ipr3.htm>. IP is defined as 'knowledge and its creative application' generated by staff during their University employment. This includes patents, know how, design rights and data. In practical terms all knowledge and material generated by staff should be regarded as potentially being IP and generating intellectual property rights (IPR).

Agreement must be sought for all consultancy work, whether University or private, prior to carrying out the work whether during normal hours of work or not.

Detailed procedures for carrying out University consultancy, clinical private practice and private consultancy are provided in Annexes 1 to 3 respectively, with a summary flowchart in Annex 4. Failure to comply with these procedures may result in disciplinary action.

Each consultancy project requires prior agreement for the work to be undertaken and the resources to be used in carrying out the project from the Faculty Dean (or delegate as appropriate) by completing a costed proposal using the University's consultancy management system. In cases where the consultant is the Dean, approval should be sought from the Pro Vice Chancellor (Research & Innovation). In the case of private consultancy this agreement should include confirmation that any IP involved is not the property of the University.

Policy on Other External Work

The University recognises that from time to time members of staff undertake external work outside their University duties. In order to identify potential conflicts of interest and in the interests of transparency the University requires every member of staff, academic and other, to make an annual declaration of external work undertaken during University time whether remunerated or not including a note of whether the member of staff may be perceived as representing the University. This declaration will be combined with the annual related party disclosure and will be available for completion online.

Activities covered encompass directorships of companies, partnerships, employment by external bodies, private professional practice, sole practice and trusteeship (medical and non-medical), public appointments and duties, and charitable work.

Approval and Declaration

Faculties will record the number of days that members of staff use to conduct consultancy work, either privately or through the University.

Agreement and recording of consultancy activity is essential to: -

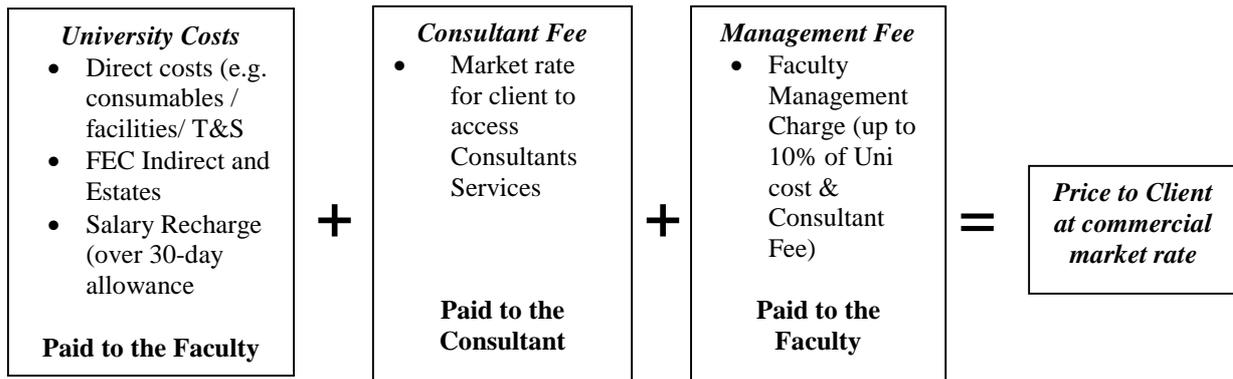
- Enable the University to meet formal monitoring and reporting requirements, both current and future, as they are introduced by Government or Government agencies (e.g. HEFCE).
- Ensure that the University can comply with the current terms of the Financial Memorandum between itself and HEFCE. This Memorandum applies to all HEIs in receipt of HEFCE funds and, inter alia, requires HEIs to estimate the institutional costs incurred in performance of all externally sponsored work including research, consultancy (including private consultancy) and other services rendered; and to recover such costs out of the overall price charged to external clients unless the institution considers it appropriate to do otherwise having regard to the circumstances of the particular case.
- Prevent uncontrolled or inadvertent transfer of University Intellectual Property to a client.
- Ensure proper insurance cover for the protection of individuals and the University to identify unduly high-risk projects for special insurance cover.
- Enable Heads of School or equivalent who are responsible for workload allocation in the faculty to ensure that both private and University consultancy activity undertaken by staff accords with the School strategy and University procedures, and does not give rise to immediate or potential future conflicts of interest within the staff member's

terms of employment.

- Ensure that HM Revenue & Customs guidelines are followed with respect to consultancy income earned.
- Safeguard the University's charitable status through an ability to produce documentary evidence at any audit.

Full time Academic staff may, with agreement, undertake consultancy commitments of up to 30 days in any financial year; this is pro-rated for part time staff. When calculating the number of consultancy days undertaken, one day is equal to 7.5 hours/ a half-day is equal to 3.75 hours and consultancy days are recorded to the nearest half day. It is expected that each consultancy contract will have a lead PI who should be an academic member of staff.

The cost and price elements for University consultancy are:



The University require recovery of specified costs that are incurred in undertaking University consultancy. The costs recovered from a University consultancy contract carried out within the 30-day allowance include all directly incurred and allocated costs and the Indirect and Estates costs at the prevailing fEC rate. Direct and allocated costs include equipment access charges and, where Faculties decide to recover such costs, business development, contract management and additional administration charges. The business development, contract management and additional administration charges will be set at a lead faculty level and will not exceed 10% of the contract costs (i.e. University costs and Consultant fee). The academic’s salary is not recovered for consultancies within the 30-day allowance.

Where a contract(s) is approved that will result in the academic staff member exceeding the 30-day consultancy allowance the University costs will include the consultant’s salary which will be reimbursed to the School in addition to the costs noted above. It is expected that the full daily salary cost is recharged but, with approval of the Dean (or nominee), the portion of salary recharged can be reduced (but not to zero). There needs to be a strategic reason, i.e. demonstrable benefits derived by the University, for charging less than the full salary cost.

The price of a contract will be the cost plus the consultant’s fee. The amount of the fee will be negotiated on a contract-by-contract basis, depending on the client and nature of the project. It is recommended that consultancy fees should usually be no less than 3 times the consultant’s gross salary costs. The fee will be paid to the consultant through University payroll with all relevant taxes deducted.

Academics can choose to waive part or their entire consultancy fee by completing a ‘Deed of Waiver of Consultancy Income’ form. This needs to be completed and signed prior to the consultancy contract being signed. The fee will be received by the host School who will decide how the funds will be used. The Consultant can make a suggestion to the host School as to how the funds are used but HMRC regulations require this to be left at the sole discretion of the University School.

Faculties will issue quotations for all consultancy projects. Consultancy proposals will be costed using the University’s consultancy management system and will require approval in line with the faculties agreed schemes of delegation for research contracts to certify that all School costs have been included and to confirm approval that the quotation should proceed.

Contracts with a value of less than £10,000 should be undertaken using the University's standard contractual terms and conditions. Client terms for contract values below £10,000 will only be considered where either the contract terms have previously been reviewed and agreed or by request from the Dean (or delegate as appropriate) to Research Innovation Service, providing details of the strategic importance of the work and the requirement to consider the client's terms.

Where a contract is received on the Client's terms the RIS Contracts team will carry out a review of the terms; highlighting to the Consultant and the Faculty any terms that it considers carry undue risk (in exactly the same manner that they do for research contracts). The Faculty will review these risks when deciding whether to proceed with the consultancy. Contract terms must be agreed and signed prior to any consultancy work commencing.

All University employees undertaking consultancy do so as part of their employment with the University.

PROCEDURES FOR CLINICAL PRIVATE PRACTICE

Clinical academic staff holding Honorary Consultant contracts with the National Health Service are permitted to engage in private practice subject to a limit of 30 days in any financial year (to 31 July) and the extent of such practice being consistent with the overriding obligations of teaching, research and clinical service attaching to the holding of a full time post and to the approval of the relevant health authority.

Conditions for undertaking private practice are: -

- Any member of staff wishing to undertake private practice must obtain permission in writing from the Faculty Dean, whose decision in the matter shall be final. The Faculty Dean should similarly obtain permission of the Deputy Vice-Chancellor.
- Charging for private practice will be done by the School, which will also be responsible for collecting payment. Payments should be made to 'The University of Leeds' and should be passed to Central Finance.
- A fee of 15% to be paid to the School of Medicine (or Leeds Dental Institute if applicable) will be deducted from each payment as and when received, the remaining 85% being paid to the member of staff or credited to a School account as below.
- The amount of the earnings for private practice which a member of staff may be paid in a tax year will be limited to 10% of the gross annual salary (including any distinction award) at 5 April of that year.
- A member of staff may direct all or part of the earnings from their private practice (after the deduction of the 15% fee and certified expenses) into an appropriate account within the School. Earnings above the 10% referred to in the previous paragraph must be directed into a School account
- Payments to members of staff will be subject to deduction of tax, unless the Inland Revenue has instructed Payroll otherwise in an individual case.
- If members of staff who wish to be paid any of the earnings derived from private practice apply to HMRC to be taxed under Schedule D (which they are encouraged to do) the University will, if approached by HMRC, confirm that it is in favour of such an arrangement in these circumstances.

The NHS indemnity scheme provides cover for University clinical staff in respect of their treating of NHS patients or undertaking research under their honorary contracts. University clinical staff are advised to maintain full insurance cover for professional work falling outside the scope of the NHS scheme. The basic rate provides cover for all non-NHS professional work subject to an earnings limit of £1000 a year. Provided that the School of Medicine/ Leeds Dental Institute certifies that it has received significant financial benefit from the work undertaken outside the scope of the NHS scheme, the University will reimburse the member of staff for two thirds of that part of the subscription relating to cover over the basic rate.

Private practice for the purpose of these procedures does not include: occasional lectures; external examinations; family planning; post-mortems; signing cremation certificates; forms of private consultancy work other than private clinical practice for personal gain; and administrative work undertaken on behalf of, and paid for by, the National Health Service.

However these activities combined with other consultancy should be limited to 30 days per annum and be consistent with their teaching and research commitments. The University's policy on such matters is that the members of staff concerned are at liberty to retain any fees earned. Pathologists have agreed that fees for post-mortems will be paid into a University account and that individual pathologists receive income from this up to a total of 10% of their annual salary.

Medico-legal work is also excluded from the definition and terms for private practice set out above. Members of staff wishing to undertake such work should obtain, from the person to whom they are responsible, written consent to the extent of any such commitment, but earnings from this work may be retained without restriction. Senior staff should obtain the consent of the Faculty Dean and the Faculty Dean from the Deputy Vice-Chancellor as to the extent of their commitment to medico-legal work, which combined with other consultancy is limited to 30 days per annum and be consistent with their teaching and research commitments.

PROCEDURES FOR PRIVATE CONSULTANCY PROJECTS

These relate to circumstances where the individual acts entirely in a private (personal) capacity. The client contracts directly with the consultant, therefore the client has no link to the University and the University does not have any legal obligation or liability to the client. The consultant is responsible for their own insurance and professional indemnity cover.

If an initial enquiry for consultancy work is made to a member of staff through their University address, telephone or email address this is University Consultancy and may not be considered to be Private Consultancy.

The consultant must ensure that their client is aware that they are acting in a personal capacity and not on behalf of the University.

The consultant must not use any University address (mailing or email) in any communication with the client nor make use of any University resources in the course of the consultancy or do anything that might lead the client to believe that the consultant is acting in his/ her University capacity (e.g. by using University headed notepaper, University email address etc). The consultant may say that he/she is employed by the University, since this is a simple matter of fact.

The consultant must not compete with the University.

It is the consultant's responsibility to account for any income tax, national insurance, VAT or any other taxes due to the appropriate tax authorities on amounts earned from Private consultancy work.

The consultant may not use any of the following: -

- University staff other than the consultant.
- University facilities e.g. equipment, IT equipment including PCs, telephone, space, expertise and intellectual property.
- The University's name or stationery.
- University property for meetings as this may be legally interpreted as an association with the University and the University's tacit approval of the consultancy services.
- The University owns IP generated by members of staff in the course of their duties at the University. Therefore consultants acting in a Private Capacity cannot, as part of any agreement they sign with a client, use or give rights to any University IP (since they do not own that IP).

In a Private consultancy, it is the consultant's responsibility to: -

- Negotiate his/ her terms and conditions with the client.
- Insert in all contracts the following disclaimer:

The work undertaken under this contract is not undertaken on behalf of the University of Leeds and therefore the University owes no responsibilities or liability in relation to such work.
- Collect the fees from the client. Fees from a Private consultancy or private professional practice must not be paid into a University account. However, the

consultant can make a charitable donation to the University under gift aid that will be credited to a School account.

- Account for his/ her income tax, national insurance, VAT or any other taxes due to the appropriate tax authorities on amounts earned.
- Consider carefully the risks involved and where appropriate obtain adequate professional indemnity cover through personal insurance arrangements.

Consultancy Flowchart

