

## **CONSULTANCY POLICY**

### **1. Introduction**

1.1 Oxford Brookes University values the undertaking of consultancy activity by staff. It recognises that consultancy forms a necessary and vital part of its function as a University, in particular in encouraging a close relationship with the community, including industry, business and commerce. Consultancy can bring benefits to the University, Schools, Directorates and staff. Through its consultancy policies and practices, the University will offer an efficient and effective service to the community, based on the excellence of its educational and research provision. The policies outlined below are intended to support University consultancy activities to the benefit of all concerned.

1.2 The reasons for undertaking consultancy are many and include:

- assisting in international, national, regional and local goals of wealth creation and improving the quality of life, including the goals of the Technology Foresight programme;
- provision of an efficient, reliable and competitive service to any portion of the community, local, regional, national or international that could benefit from the extensive educational and research expertise available at the University;
- developing and enhancing contacts with commercial organisations, leading to collaborative research and educational ventures;
- maintaining up-to-date expertise among staff, and the social, industrial and commercial relevance of their research and teaching;
- enabling staff whose expertise has a commercial value to benefit financially as well as professionally from their external work;
- enhancing the University's courses and research through the provision of case studies and real world problems drawn from successful consultancies;
- providing an income stream to the University, its Schools, Directorates and their staff, and a financial return on capital investment;
- enhancing the profile of the University externally.

### **2. Definitions**

2.1 The University wishes to retain a broad definition of what constitutes consultancy. Its essential features are:

- Consultancy is work of a professional nature, undertaken by University staff in their field of expertise, for clients outside the institution, and for which payment is made, either to the University or directly to a member of staff:

- Consultancy will produce some form of contracted output which, in general, would be partly or wholly owned by the client;
- The University normally does not have freedom of publication over the results of consultancy.

#### 2.2 'University consultancy'

University consultancy is work carried out by members of staff acting as employees of the institution. The work carried out may be additional to normal duties (for which additional payment over and above the normal salary may be made) or may be part of normal duties for which no additional payment is made (See Section 4). University consultancy falls outside the University's statutory purposes (higher education and research) and so must be undertaken through the University's trading subsidiary, Oxford Brookes Enterprises Limited.

#### 2.3 'Private consultancy'

Private consultancy is carried out by members of staff entirely independently of the University. Such work is undertaken exclusively in the consultant's own time and makes no use of University resources (See Section 5).

2.4 Consultancy will normally exclude research funded by UK Research Councils, charities or through European research awards, where the main aim is to conduct research, without profit, in an innovative manner. Nevertheless, the University takes a financial overhead from such work, where possible and appropriate.

2.5 Excluded from the definition of consultancy are certain activities conventionally undertaken by academics as part of their normal work but which are often the subject of a contract, including external examining, quality assurance work for external institutions, and authorship of textbooks commissioned by a publisher.

2.6 The word "staff" is intended to mean employees of the University. In the main, this is likely to mean staff employed on academic or research contracts, but those employed in other professional roles are not excluded.

### 3. Principles governing University Consultancy

3.1 The University attaches considerable importance to consultancy for the reasons given in paragraph 1, and wishes to encourage all Schools to be involved in this activity. Directorates may also choose to be involved. Consultancy should be given a level of priority which is consistent with the requirements placed upon or agreed by the School or Directorate concerned (see 3.4).

3.2 The University recognises that consultancy represents one of the main links between it and the community, and that one of its critical features is that it must be rapidly responsive to the needs of both the community and the University's consulting staff. Support in all matters relating to consultancy, including financial, contractual, and legal matters is provided to staff by the Financial and Legal Services Directorate through Legal Services and the Research and Business Development Office.

3.3 At the request of the University's Schools or Directorates, central support and expertise will be made available for promoting and marketing consultancy services.

- 3.4 The University believes that the responsibility and authority for prioritising consultancy within a School's or Directorate's range of activities must be with the Dean of School or Director and be agreed with the University through the strategic and operational planning process. It is in the Schools and Directorates that the availability of resources and expertise is best known, and where strategic and operational objectives are initially set. Similarly, the quality assurance of consultancy undertaken must rest with the Dean of School or Director.
- 3.5 Nevertheless, the University holds the ultimate responsibility for taking an overview of its consultancy portfolio and through the strategic planning process will, where appropriate, negotiate with Schools and Directorates on their activities, taking advice from the Research and Knowledge Transfer Committee where appropriate.
- 3.6 It is not expected that all academic staff will be involved in consultancy as defined in paragraph 2; the University recognises that different staff will be involved to differing extents in consultancy, research, professional practice, course development, teaching and academic management, as determined within a School's portfolio.
- 3.7 Similarly, it is not expected that all support staff will be involved in consultancy. The details of support staff duties are determined within Schools and Directorates.
- 3.8 Deans of School and support Directors should ensure that where legal and financial considerations require, consultancies are carried out through Oxford Brookes Enterprises Ltd. Separate documentation provides guidance.
- 3.9 All staff proposing to undertake a consultancy require approval from the relevant university authority before making a commitment. Authority for approval of consultancy is vested in the relevant Dean of School or Director, although it may be delegated. The Dean or Director nevertheless carries responsibility.
- 3.10 Approval may be denied for a range of reasons, including lack of financial viability, staff workload or lack of appropriate expertise. Consultancy must not involve activities that have the potential to bring the University into disrepute or that conflict with the interests of the University, School or Directorate. Work that may raise ethical issues, for example involving animals or human data or human material, or work that may require specific insurance cover – for example in aeronautics, building or product design, clinical trials, or work in/for clients in Canada and the United States – should be referred to the Research and Business Development Office or to Legal Services for advice. Within such constraints, however, the University would, in general, expect consultancies to be approved, unless undertaking them would contravene University policy as determined by Academic Board or bring the University into disrepute.
- 3.11 Individual staff may refuse to undertake a particular consultancy if it conflicts with a personal, moral or ethical belief.
- 3.12 The University will monitor the operation of this policy through the Research and Knowledge Transfer Committee and may update it from time to time. While respecting the necessity for confidentiality, the University will also monitor School and relevant Directorate performances in their consultancy activities.

#### **4. Consultancy carried out through or on behalf of the University**

- 4.1 Staff are strongly encouraged to undertake consultancy activity through or in collaboration with Oxford Brookes University. All consultancies carried out through or on behalf of the University must have a legal contractual basis and contracts must be signed by the relevant University authority. *Inter alia*, the contract must refer to financial arrangements, the time scale, deliverables and to ownership of output including the intellectual property. Separate documentation gives detailed advice on these matters. Deans and Directors are responsible for making staff aware of the University's legal and financial requirements relating to consultancy, and for the quality assurance of the service provided to clients.

- 4.2 Consultancy contracts should be drawn up using the costing procedures agreed by the University and published in separate documentation. It is essential that these are approved by the relevant University authority at a very early stage and certainly before the consultancy is undertaken. All proposals should be discussed with the Research and Business Development Office before any terms are offered or commitment made to an external party.
- 4.3 Any use of University IT facilities in conjunction with consultancy work must be carried out in accordance with the 'Regulations for the use of IT facilities at Oxford Brookes University' ([http://www.brookes.ac.uk/services/cs/about\\_us/rules.html](http://www.brookes.ac.uk/services/cs/about_us/rules.html)). Of particular note are the need to obtain approval for the use of IT facilities for commercial or outside work, and the requirement to adhere to the terms and conditions of all licence agreements, including use of electronic resources such as databases and e-journals as well as software and other products.
- 4.4 The University will take an overhead from all consultancies at the time of income being generated. Schools and Directorates are also expected to take an appropriate overhead on all consultancies. This should normally be in line with the level of University overhead.
- 4.5 For each piece of consultancy work carried out through or on behalf of the University, the School or Directorate concerned will agree in advance with the member(s) of staff involved:
- Whether the consultancy will be undertaken as part of, or in addition to, a normal workload.
  - The daily rate of the staff member(s) carrying out the consultancy.
- 4.6 For consultancies carried out 'in addition to a normal workload', staff may elect to receive their daily rate (or part thereof) as additional payments or to retain these funds in the School or Directorate to support individual or group research activities. Payments taken additional to a normal salary will be subject to National Insurance deductions. Pension contributions may be opted out of but if made the employer's contributions must also be paid. The daily rate received or retained by staff must at all times be at least equal to that charged to clients, although it may, in appropriate circumstances, be less than that charged to clients. Under no circumstances should the daily rate received or retained by staff exceed that which is charged to clients.
- 4.7 For consultancies carried out 'as part of a normal workload', no additional payments to staff will be paid.
- 4.8 Guidance on the calculation of direct costs is provided elsewhere but in all cases must include the full economic cost of staff time spent on the consultancy, whether or not the work is undertaken within or in addition to a normal workload. Surplus income arising from consultancies carried out through or on behalf of the University (calculated after the deduction of all direct costs, and University and School overheads) will accrue to the relevant School or Directorate.
- 4.9 Deans and Directors will be required to incorporate an annual account of consultancy income into their Strategic and Financial Planning, including the amount of consultancy income brought into the School or Directorate, the amount and percentage of School overhead on that income, and the amount and percentage of income disbursed to named individuals, research groups and/or departments.

## **5. Private consultancy**

- 5.1 All staff are permitted to carry out and retain the income from private consultancy. For staff employed full-time, the following conditions apply:

- The total of all private consultancies must not exceed 20 days in any academic year.
  - Where a proposed consultancy may extend beyond 20 days then the whole of the work should be undertaken as University consultancy.
- 5.2 All private consultancies must be notified to the Dean of School or Director in advance of its undertaking, including consultancies carried out by individuals employed on fractional contracts.
- 5.3 Staff are personally responsible for the consequences of performing private consultancy work, and for ensuring that clients are fully aware that the University is in no way responsible for or liable in respect of consultancy work which is carried out privately by members of its staff.
- 5.4 Consultancy carried out privately must not involve activities that have the potential to bring the University into disrepute or that conflict with the interests of the University, both as an employer and as a Higher Education institution, or any of its subsidiaries.

## **6. Intellectual Property**

- 6.1 It is the policy of the University that the product of consultancies carried out through or on behalf of the University is of value and should be owned, protected and used by the University for the general good of the whole University community. This position is subject to negotiation where the expectation of some new IP being created is of particular interest to clients. In these situations, the proposed creation of new IP should be reflected in the consultant's fee. All staff are required to discuss IP issues with the Research and Business Development Office in advance of carrying out any work likely to lead to its creation. Disbursement of future income or royalty from IP, patents etc will be agreed between the University, the School or Directorate and the individual. (See the University IP Policy for details).

**Approved by the Research & Consultancy Committee on 13 May 2003 (renamed the Research and Knowledge Transfer Committee in January 2004) and the Academic Board on 25 June 2003 (Chair's Action 26 June 2003).**

## Payments to staff for additional work

### Introduction

1. The purpose of this memo is to set out issues of good practice in making additional payments to academic staff for undertaking consultancy work in addition to a full workload.

### Background

2. Over the years, a wide range of practices has developed concerning how consultancy work undertaken by staff is rewarded.
3. The internal auditors recommended in their report 07/03 that cross-University clarification was required on:
  - The circumstances where additional payments could be made to full-time academic (or academic-related) staff;
  - The basis on which any additional payment should be determined; and
  - The mechanism for making such payments.
4. The circumstances which warrant additional payments to APTC and manual staff and the rates and method of calculation have already been determined and set out within HR policy terms and conditions and are therefore not covered here.

### Private consultancy

5. Each member of academic staff is permitted to undertake up to 20 days of private consultancy, in their own personal time, each year as long as ALL of the following conditions are met:
  - The Dean of School is informed and the work is not of a nature likely to bring the University into disrepute if the connection of the individual to the University is known;
  - The individual makes it clear to the customer that they are working on their own behalf and not through the University;
  - That no University facilities are used in the execution of the work.
6. In these circumstances no adjustment should be made to the individual's work load, the hours are not included within the TRAC return (as they are not hours worked for the University) and any work completed by the individual is not covered by the University insurance policies (such as professional indemnity, public liability etc).
7. Deans should ensure that records of private work of which they have been informed are provided to RBDO, as the information can be included within the wider evaluation of the University's interaction with business and the community.

### Circumstances warranting additional payment

8. Where the work is undertaken as University consultancy two possibilities exist:
  - The work can be added to the individual's workload plan without imposing an unreasonable workload on the individual;
  - The individual's workload is already full.

9. In this latter case it may be appropriate for the individual to undertake the work and there will be grounds for making an additional payment to recognise that they have undertaken work in addition to a full workload.
10. In these cases the work is undertaken as University consultancy and the hours should be included within the TRAC returns.
11. It is important for schools to organise their affairs so as to give a reasonable return for the cost of employing staff. Accordingly, staff who regularly undertake consultancy should have an allowance included within their workload plan, or should review workload plans when consultancy opportunities arise, to consider whether more routine work can be distributed differently.
12. If a member of staff has received, or is likely to receive, additional payments of more than 20% of annual salary, then this is a probable indicator that their workload plan has not been structured to take account of their consultancy opportunities. Equally, if all of the consultancy they undertake is - outside of their workload plan this also indicates that the consultancy opportunities have not been properly reflected in the plan. Where possible workload plans should be constructed to ensure that at least 50% of an individual's regular consultancy work falls within their workload plan. Of course this may prove difficult where someone becomes active in consultancy for the first time or where there is a significant increase in demand for a particular expertise.

#### **Determining payment levels**

13. If an individual carries out work in addition to their workload plan then the question arises as to how to determine the payment for this work. As a general principle the reward to the individual should be related to the likely effort they are required to put in. So, for example, where the contract is expressed in days then the reward to the individual should be based on that (days X individual's daily rate of pay) and the individual should attach their claim for payment a note demonstrating the days on which they worked).
14. For the sake of clarity these arrangements should be identified before the contact is accepted so that all parties are clear of the basis on which the work is undertaken - the following additional conditions should apply:
  - Normally no payment should be made to individuals in circumstances where the full school and University overhead has not been allowed for;
  - Normally no payment should be made to an individual where it would result in a deficit on the contract;
  - No payment should be made to individuals where the terms and conditions of contract prohibit it;
  - No payment should be made to individuals in advance of the customer paying the invoice;
  - Any time input required to rectify unsatisfactory work should not be cause for additional payments.

Prior to authorising payments the Dean, or delegated representative, will ensure that evidence exists that the input was in addition to a full workload plan.

## Principles and procedures for Academic Trust Fund

### (a) Principles

- The individual's entitlement to an additional payment must first be demonstrated;
- Individual identifies the amount they are prepared to forego and the purpose to which they want it applied;
- Once the offer to forego is made and then accepted by the University, the University is obliged to use those funds solely for the purpose specified. This means that any moneys unspent at the year end will be rolled over automatically to the following years;
- Permitted uses of the fund are the individual's own staff development, scholarship, research expenses. Or the same expenses for a group;
- Anything purchased with the Trust Fund is the property of the University, not of the individual;
- Any expenditure incurred from the Trust Fund must be in accordance with the University's financial regulations;
- The donation once made is not reversible, and if the individual leaves then the fund will be available for the stated purposes for the academic department the individual worked in.

### (b) Academic Trust Fund Tool Kit

A standard template will be provided on which:

- The individual's entitlement to a personal payment will be demonstrated;  
The individual will specify the purposes to which the donation can be put;
- The terms and conditions of the scheme are set out;
- The code from which the personal payment would have been made is identified;
- The donor will sign and the Dean or representative will sign to accept.

### (c) Procedure

- Individual completes template and signs - passes to Dean or representative;
- Dean or representative signs to accept donation - passes to finance;
- Finance establishes code and posts donated income plus 10% from school and 10% from University. Only Finance staff will post income to trust accounts;
- School will administer the trust fund in accordance with the wishes of the individual as expressed at the point of donation;
- At the end of each year finance will add interest to the account based on the average balance during the year and the whole unspent balance is rolled forward.

Appendices added June 2005