

Spinout and Start-up Policy

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Contents

Contents	1
Spinout and Start-up Policy Overview	2
Spinout and Start-up Policy	2
1. Responsibility	3
2. Coverage of the Policy	3
3. Spinout Formation	3
4. Required Documentation	4
5. Division of Equity and Revenues between the Founders and the University	5
6. Spinout Licences and Assignment	5
7. IP Pipelines	6
8. Spinouts Based on IP from more than one Institution	6
9. Start-ups	7
10. University Support for Spinouts Post-Incorporation	7
11. University Engagement with Spinouts	8
12. Legal, Financial, Tax and Insurance Matters	8
13. Obligations on Subsidy Control	8
14. Amendments to the Policy and Approvals Process	9

Spinout and Start-up Policy Overview

Enterprise, Innovation and Inclusion are three important elements in the University's strategy for 2020-35. The University aims to promote a culture of entrepreneurship among its staff and students and to create an environment in which staff and students from all backgrounds can thrive. When University research produces outputs and intellectual property (IP) with commercial potential, one of the routes to generate impact and potential financial returns for the inventors/ creator(s) of the IP and the University is to form a spinout company. The other route is commercialisation by licensing the IP to a commercial organisation, which is covered by the IP Policy. In this Policy, a spin-out refers to a new organisation or business entity that emerges from an existing one where the founder(s) won't own the whole business and it will also have a minority shareholder - the 'parent', and in this case Oxford Brookes.

In this document an inventor/ creator(s) is defined as a staff member responsible for creating, inventing or developing IP, and a Founder is defined as a person or organisation with equity in the company and involved in establishing and setting up the company.

Alternatively, entrepreneurial staff or students may wish to create a start-up company or social enterprise that is independent or largely independent of research outputs and IP. In this Policy a start-up refers to a business, usually carried on through a limited company, that has just started.

Relationship to the broader UK HEI innovation landscape

Spinout creation is an important metric that features in the Higher Education Business & Community Interaction Survey (HE-BCI) and average turnover of spinouts and average external investment received are chosen metrics within the IP and Commercialisation perspective of the Knowledge Exchange Framework. The number of spinouts, start-ups and social enterprises formed are Key Performance Indicators in the Research & Innovation pillar of the University strategy. Following the UK Government's Independent Review of University Spin-Out Companies¹. In 2024, UKRI accepted the key recommendations made by the Expert Panel and set out its expectations for adoption by universities.

The University's IP Policy covers IP generated in the University context, including Oxford Brookes' approach to Revenue Share Arrangements. This Spin Out Policy, which is subsidiary to the IP Policy, provides the framework that gives University staff and inventor/ creator(s) of IP that has been assigned to the University and being considered as members of staff (for example, postgraduate research students), the incentive to participate and receive a reward for IP creation via a spinout company. This Policy sets out the requirements for University approval, thus, by definition, University IP is a prerequisite for a spinout.

In this Policy, the terms and guidance that apply to spinouts apply also to staff start-ups where indicated.

This Policy should be read in conjunction with the Guidance on Commercialisation of IP that outlines the processes to be followed in the creation of a spinout or staff start-up.

For the absence of doubt, student start-ups are not covered by this Policy.

¹ <https://www.gov.uk/government/publications/independent-review-of-university-spin-out-companies>.

Spinout and Start-up Policy

1. Responsibility

- 1.1. The Pro Vice Chancellor for Research and Innovation (PVC R&I) is responsible for the University's Spinout and Start-up Policy. The Research, Innovation and Enterprise Directorate (RIE) is responsible for the implementation and operational delivery of the Policy to ensure effective protection and commercialisation of University IP through spinout formation and to support staff start-ups.

2. Coverage of the Policy

- 2.1. The Founder(s) who can participate in a spinout company comprise of the university staff or those being considered as members of staff (refer to the IP Policy) who are the inventors or creators of the IP (the ones named in any patent to be licensed to the spinout) and other contributors including those individuals named in the Invention Disclosure Form who, while they may not be inventor/ creator(s) as defined by patent law, have made significant contributions in developing the invention and bringing it to the point of commercialisation. Other staff who assist with the formation and development of the spinout company are not Founder(s) and are not entitled to receive any Revenue Share Arrangements.
- 2.2. Establishing a spinout is a significant commitment for both staff and the University. The Founder(s) will generally need to commit significant time to the business in its early years while also carrying out their day jobs within the terms of their University employment contracts. There are various statutory, legal, financial, tax and other governance matters that Founder(s) who become Directors of the spinout need to understand as part of their responsibilities.
- 2.3. However, establishing and growing a spinout company can be rewarding. It offers the opportunity to access larger sources of funding for proof of concept development than is normally available within the University.
- 2.4. Participating in a spinout also provides an opportunity for members of staff to develop entrepreneurial and commercial skills and to broaden their industry networks. As well as being a vehicle for taking research through to impact, a spinout can lead to a REF Impact Case Study, additional contract research for the University, new grant-funding opportunities, the development of skills and industry exposure for the whole research team and additional publications. If the spinout is a success, there is also the potential for additional income and even wealth.
- 2.5. Sometimes staff identify commercial opportunities where there is no protectable IP from University research. This situation is addressed in section 9 – Start-ups.
- 2.6. This policy is part of and subordinate to the University's Intellectual Property Policy. The university approval process relating to the formation of spinout companies and management of licences and equity holdings is provided in the Guidance on Commercialising IP.

3. Spinout Formation

- 3.1. Before a decision is made to establish a spinout company, the Directorate for Research, Innovation and Enterprise (RIE) will undertake an assessment to determine the best possible route to commercialisation, which may include spinout, licensing or a start-up. Potential Founder(s) will be included in this review process and the information provided in the Invention Disclosure Form will inform the process, as set out in the Guidance on Commercialising IP.

- 3.2. Before setting up a spinout company, the leading Founder member(s) of staff, typically the inventor/ creator(s) of the IP, and the RIE should research the potential markets and prepare an agreed business plan. It may be possible to draw on internal or external support schemes to help buy out a Founder's time and use external expertise, e.g. from a local accelerator programme or Innovate UK's national ICURe programme (Innovation-to-Commercialisation of University Research).
- 3.3. Before a spinout is created, RIE will perform detailed Due Diligence including to determine whether acquisition of equity in the spinout by the University requires approval under the National Investment Security Act 2021. If so required, RIE shall apply with all necessary information for approval.
- 3.4. If a decision is taken to progress, the usual process for forming a spinout is:
 - a) With the support of RIE, the inventor/creator(s) of the IP to be commercialised and Founder(s) of the company determine their relative contributions up to the point of spinout formation and obtain authorisation to set up a spinout company in line with the University's IP Policy and as detailed in the Guidance on Commercialisation of IP;
 - b) The Founder(s) of the spinout set up or buy a shell company and issue shares in proportion to their agreed relative contributions recorded with the RIE;
 - c) The University licences the relevant IP to the spinout and receives as consideration an agreed allocation of shares plus an entitlement to receive fees and/or royalties as specified in the Licence Agreement (clause 4.4);
 - d) The spinout secures the funding, management, premises and advisory personnel and other resources it requires to begin operations.
- 3.5. Not all the Founder(s) in a team that establishes a spinout need to play an active role in the company. They are still entitled to Founder shares and will receive shareholder documentation from time to time when the company needs to inform shareholders or seek shareholders' agreement to an important company proposal.

4. Required Documentation

The university will adopt best practice as recommended by the independent spinout review 2023 and, where appropriate, develop templates to streamline the process and ensure timely completion of spinout creation.

- 4.1. **Shareholders Agreement** is an agreement between the company and its Shareholders including the Founder(s) and the University. It governs such matters as the issue and transfer of shares, the taking and making of loans, the appointment of directors, the frequency of board meetings, company reporting, the entering into service agreements with directors or connected persons, the payment of dividends, the provision of information to the University, etc. The University will normally require the right to appoint an observer or a director to the board. Any new shareholder will need to sign a **Deed of Adherence to the Shareholders Agreement**. However, when a significant investor joins the company, the Shareholders' Agreement is usually renegotiated to accommodate the investor. It can then sometimes be called an "Investment Agreement".
- 4.2. **Articles of Association** often follow an approved model under the Companies Act 2006 and cover additional governance matters and procedures such as directors' powers and proceedings, conflicts of interest, allotment and transfer of shares, pre-emption rights, general meetings, etc.
- 4.3. **Licence Agreement** is an agreement between the University and the spinout company that sets out the IP rights that the University is giving the spinout, including

the technical fields, markets and territories, and what the consideration the spinout is giving the University in return by way of shares, fees and royalties.

4.4. **University Share Option Agreement** (see 5.2).

4.5. **Consultancy and/or Secondment Agreement** for Founder(s), if required.

5. Division of Equity and Revenues between the Founders and the University

- 5.1. The equity element of the consideration that the University receives for licensing its IP to the spinout is normally negotiated between the range of 10-25% of the shares in the spinout, prior to external investment, with the remaining to be owned by the Founder(s). For less IP intensive sectors, common in software only, the University equity may be 10% or less. These equity splits are in alignment with Government recommendations (2023) for University spinouts. These proportions are normative and may be varied where justified in specific cases, for example, where third parties are involved in a joint venture (see Clause 8).
- 5.2. The Founder(s) may agree to an allocation of shares to a person who has made a significant contribution to the development of the spinout project up to the point of licensing, but not as an inventor/ creator, which merits consideration for their inputs. In this case, the allocation will be made from the Founders' share of equity in proportions to be agreed between them. A written disclaimer will be required from each Founder agreeing to the adjusted equity allocations. In exceptional cases, the University may agree to an additional allocation to a person, not an inventor/creator, who has made a significant contribution to the spinout project with demonstrable benefits to the University. In this case, the additional allocation will dilute the University and Founders' equity shares in equal proportions.
- 5.3. The University may choose to take its stake in the spinout as a combination of shares and share options.
- 5.4. Where commercial fees or royalties are payable in accordance with a Licence Agreement, the net proceeds will be shared between the University and the inventor/creator(s) of the licensed IP in line with the share of Revenue Share Arrangements specified in Appendix B of the IP Policy.
- 5.5. Reimbursements by the spinout of any patent charges or other direct costs incurred by the University are not part of Net Benefits and are not shared with the Creators of the licensed IP. Similarly, any income the University receives from a spinout for rent, research contracts, technical or other services are not shared.
- 5.6. In the event that the spinout pays a dividend to its shareholders, the Creators and the University will get the dividends due to them from their respective shareholdings. Accordingly, the University will not share dividends from its shares with Creators.
- 5.7. Similarly, on the sale of the University's shares, the net proceeds will pass to the University only.
- 5.8. The University may attribute up to half of any net proceeds that derive from its shareholding to the Faculty or Faculties of the Founder(s) based on the joint recommendation of the PVC Research & Innovation and the Chief Financial Officer to the Vice Chancellor for approval.

6. Spinout Licences and Assignment

- 6.1. The spinout's IP licence will normally be granted on an exclusive basis in certain fields and territories where the University has freedom to do so. The spinout will be obliged to reimburse the University for any fees it occurs for the maintenance of the licensed patents and other registered IP, such as renewal fees. Expenses in connection with the prosecution of patent applications, such as the fees for granting of patents, will continue to be paid by the university. Other fees (e.g. for assignment)

and royalty payments when the spinout is generating a minimum level of revenues may also form part of the licence agreement.

- 6.2. The University will only licence, not assign, IP to a spinout at formation. It will not assign or otherwise transfer ownership of the IP unless and until the spinout has achieved one or more significant success milestones, such as a minimum level of investment or sales revenue or an exit deal through a trade sale or initial public offering. This ensures that if the spinout fails, the licence terminates and the IP is returned to the University so that it has the option to develop an alternative route to commercial impact.

7. IP Pipelines

- 7.1. The IP that is licensed into the spinout at formation is the IP that exists at the date of the licence. The licence will not give rights to any future IP that may be discovered and developed (an “IP pipeline”) and which the spinout may wish to have access to.
- 7.2. Any future IP that is of potential interest to the spinout would be subject to a separate negotiation and licence agreement.
- 7.3. The University will, exceptionally, consider granting an option to licence future IP in a narrowly defined field and for a limited time scale, subject to the approval of the University.

8. Spinouts Based on IP from more than one Institution

- 8.1. IP licensed to a spinout that derives from collaboration between researchers of different institutions usually first requires an inter-institutional agreement. This sets out, amongst other things:
 - a) The relative contributions of each institution, including any background IP;
 - b) Which institution will lead in managing the IP, how IP costs will be shared, how it will be licensed;
 - c) The shareholdings in the spinout;
 - d) Institutional representation on the spinout board;
 - e) How proceeds from the spinout will be handled and the compensation to the institution that takes the lead in these tasks.
- 8.2. An inter-institutional agreement may be required when a principal investigator changes employment from one institution to another. The IP may be owned by the former employer, but the new employer and the Creator together are often better placed to commercially exploit it.
- 8.3. As a general principle, the simplest approach is for the parties to decide which institution will lead the commercial exploitation efforts and then for the other party to assign its IP to the lead party together with all commercialisation responsibilities. This can include holding the other institution’s equity in the lead’s name. In return, the lead party can expect to be compensated with a fee or an additional share of the equity and proceeds above the creative split of the IP between institutions.
- 8.4. Where a member of the University staff is collaborating or consulting with a member of staff of another institution and that institution or that institution’s member of staff sets up or intends to set up a company with the offer of shares to the University staff member, a conflict of interest will arise relating to the commercialisation of the University’s IP.
- 8.5. The University may be considering other routes for exploiting its IP. The IP may have been created with University colleagues who do not have a relationship with the other institution or the company. In all circumstances, staff must first consult with the Director of RIE and the Dean for Research and Innovation

before carrying out any external work with the company or before acquiring any interest in the company so that any potential conflict of interest may be resolved in a manner that is mutually acceptable to the University and member of staff.

- 8.6. In the event that the staff member does independently acquire shares, share options or other consideration in the company and the University decides to licence its IP to that company, the University's default position is that the staff member will not be entitled to any proceeds from the licence as part of Revenue Share Arrangements.

9. Start-ups

- 9.1. Sometimes staff identify opportunities to set up a business where there is little or no protectable IP derived from the University's research. For example, making and selling laboratory tools and accessories.
- 9.2. There may be no invention to patent and the designs and operating software may even be Open Source, but the products meet a need in the market and could be sold profitably and this is best done by an arm's-length company, not the University.
- 9.3. Such businesses are sometimes described as staff "start-ups", to differentiate them from "spinouts" where there is protectable, research-derived IP.
- 9.4. Start-ups, while not usually being the direct product of University research, often do rely on some University IP in the form of knowhow and/or the expertise of the Founder(s) acquired from their university jobs and experience.
- 9.5. In the circumstances outlined in 9.4, on the recommendation of RIE as part of the assessment of commercial potential (see 3.1), it may be appropriate for the founding shares split between the Founder(s), normally 75-90%, and the University, normally 10-25%, to be varied as appropriate for a start-up, subject to university approval.
- 9.6. RIE will prepare the documentation for a start-up and will negotiate an appropriate, non-exclusive licence of the University knowhow that is to be applied. The knowhow licence gives the start-up the necessary freedom to operate in its field of commercial activity in relation to the University's IP, something that potential investors will want to know when carrying out due diligence.

10. University Support for Spinouts Post-Incorporation

- 10.1. Spinouts are independent legal entities from the University and must be treated at arm's length. The University, as a charity, cannot subsidise the operations of a third-party commercial organisation, even if it is a significant shareholder.
- 10.2. The University expects spinouts to become independent of the University as soon as possible. This includes funding, employment of staff, use of space and facilities and use of professional advisers.
- 10.3. Any transactions between the University and a spinout, e.g. rental of University equipment or space, or sale of spinout products and services to the University, must be on an arm's-length basis, i.e. on the same terms and conditions as would be used with any other external organisation.
- 10.4. If the University has taken up its right to a Director on the spinout board, that person must act, by law, in the best interests of the spinout, not the University. To avoid conflicts of interest, the University Director on a spinout board cannot give the University's consent to any matter that is required in the Shareholders Agreement. The spinout must write to the University to request a written consent.

- 10.5. Spinouts must not represent themselves as being part of the University or use the University's name or logo in any way that suggests or might be taken to suggest that the University endorses or otherwise supports their commercial activities.
- 10.6. The success of a spinout is enhanced by the availability of local support mechanisms such as access to innovation vouchers, financial management capability, accelerator programmes, start-up/spinout friendly spaces and innovation ecosystems. Therefore spinouts are eligible to access University support in these areas on the same terms and conditions as are available to other businesses.

11. University Engagement with Spinouts

- 11.1. Members of University staff should ensure that there is no reduction in fulfilment of their duties under their employment contracts with the University if they are also involved with a spinout company.
- 11.2. If University staff engage with a spinout through contract research, consultancy or a service agreement, they must follow the University's regulations and procedures for taking on external work.
- 11.3. There will be a presumption of a Conflict of Interest for University staff (or related parties) who have a share in a spinout. University staff must declare any potential conflicts of interest in line with University procedures.
- 11.4. A member of staff with an interest in a spinout must not be involved in any transactions between the University and the spinout. The University's Conflict of Interest Policy covers matters relating to the notification and mitigation of Conflicts of Interest.
- 11.5. The University wishes to maximise its research activities. Accordingly, academic members of a spinout should not carry out research activities in a spinout which should be properly carried out in the University, however, where appropriate collaborative research is supported through the University's normal grant funding procedures.

12. Legal, Financial, Tax and Insurance Matters

- 12.1. All staff engaged with a spinout must seek their own legal, tax and other professional advice relating to their shareholding or role as a director, consultant or employee.
- 12.2. University professional services staff must not provide legal, tax or financial advice to spinout companies.
- 12.3. Staff will not be covered by the University's insurance policy, and the spinout should take out its own policies including those related to directors' and company officers' liabilities. It is important that staff who are directors of a spinout understand their statutory duties.
- 12.4. The University will not be liable for the actions of spinout companies.

13. Obligations on Subsidy Control

- 13.1. The [UK's international obligations on subsidy control](#) deems that technology transfer activities carried out by Research Organisations (ROs) are considered non-economic activities, including licensing, spin-off creation, or other forms of management of knowledge created by ROs, provided they are of an internal nature and where all income generated is reinvested in the primary activities of the RO. "Internal nature" is defined as a situation where the management of knowledge is conducted by the RO or a subsidiary or contracted to a third party on a commercial basis, as with the University's RIE Directorate.

- 13.2. Knowledge management activities include licensing, feasibility studies, market assessments prior to launch and even initial funding of spinouts. This is not an economic activity as far as the RO is concerned because as yet there is no business receiving an advantage.
- 13.3. However, after the spin-out is formed, it will be a business and the terms on which it and its staff interact with the RO must be arm's length and fully commercial in order not to conflict with obligations on subsidy control.
- 13.4. To ensure this occurs, any transfer of value to the spinout is commercially negotiated by RIE in the same way as a licence to any other company, and not by the academic or the academic's department both of whom would otherwise be conflicted and not capable of demonstrating an arm's length relationship.
- 13.5. To determine a market rate for a licence to an established business, the RIE Directorate will approach several companies to negotiate the best overall deal for the University, recognizing that the technology is very early-stage and that the licensee will have to invest in its development.
- 13.6. Where a spinout is being formed, it will be responsible for securing the development grant funding and investment, for which it will negotiate the best terms it can from a wide field of investors.

14. Amendments to the Policy and Approvals Process

- 14.1. This Policy and the associated approvals process may be amended by the Vice-Chancellor on the recommendation of the PVC Research & Innovation or the Director of Finance & Legal Services following appropriate consultation with the VCG, the Knowledge Exchange Steering Group, and the Deputy Director of Legal Services.