

Policy on External Professional Activities

August 2010

This policy replaces the Code of Practice on Consultancy and Outside Interests such as Partnerships, Directorships and Similar Roles.

A. Principles of External Professional Activity

1. The University recognises the benefits of and wishes to encourage suitable external professional activities by its staff. Such activity can be a key indicator of esteem and impact, as well as potentially leading to support for “core” activities. This policy provides the framework for the range of professional activities that might be undertaken.
2. The benefits of external professional activity includes building relationships, creating personal and institutional profile, providing opportunities for collaboration, student projects and graduate employment, supplying inputs to teaching and research, raising awareness of external developments, and supporting motivation and career development.

A.1 Scope of External Professional Activity

3. There are three broad areas of external professional activity (paid or unpaid) that members of staff might undertake:
 - i) Academic Professional activities: these include external examining, editorships of academic journals, invited lectures or conference presentations (academic and non-academic audiences), academic conference organisation, publication of academic books and papers, refereeing for academic journals and presses, refereeing for research funders, one-off media interviews, newspaper articles; (income from prizes is treated as if it had arisen from an academic professional activity)
 - ii) Public Service activities: these include serving on relevant public, governmental and charitable bodies;
 - iii) Consultancy and Contracted Advisory and Professional Service activities: these include provision of expertise for commercial purposes or contracted policy advice.
4. In a number of subject areas it is possible to undertake private professional practice, e.g. medicine and law. Where a member of staff wishes to undertake private professional practice, they would do so under the same arrangements as for Consultancy, as set out in this Policy, except that they would need to have their own Professional Indemnity Insurance.
5. All of these are valid activities. All may involve reimbursement, and all may contribute to an individual's portfolio of activity and their career development. The University is committed to the support of this activity, both as part of its knowledge exchange and community engagement objectives, and as a means of developing its staff. This commitment is demonstrated by the level of time permitted, and the provision of relevant insurance. Both of these are covered in this policy statement.

6. Undertaking external professional activities may also lead to conflicts of interest, which should be managed under the standard provisions of the University's approach to conflicts of interest, by declaration via the individual's line manager.

A.2 Activities Outside the Scope of this Policy

7. Activities undertaken in a personal capacity not related to an individual's employment, e.g. as a local councillor or a school parent governor, are excluded from this policy, and a matter for the individual (although the University generally wishes to encourage its staff to be involved in their community). However, if the level of such activities were considered in the judgement of the Head of School to be interfering or conflicting with an individual's delivery of their contractual responsibilities, the University may require the individual to restrict such activity.

A.3 Liabilities Arising from External Professional Activities

8. The act of undertaking external professional activities brings potential liabilities for both the individual and the institution, whether the arrangement is with the University or directly with the individual. These may be financial (e.g. claims against non-delivery or for provision of incorrect information, which may extend to claims of negligence), or non-financial (e.g. damage to the University's or the individual's reputation through poor quality performance). Where a member of staff interacts on a personal basis or without the approval required by this Policy, they will not be covered by the University's insurance and any adverse reputational or financial impact on the University may lead to disciplinary action.

A.4 Agreement to Undertake External Professional Activity

9. University employees on academic and academic-related terms and conditions may undertake external professional activities, including consultancy, with certain of these activities being subject to agreement by their Head of School or Professional Service Director, or by their line manager for Heads of Schools / Professional Service Directors and above.
10. Academic Professional activities are not generally subject to approval. However, if the level of such activities were considered in the judgement of the Head of School or Professional Service Director, to be interfering with an individual's delivery of their core responsibilities, the University may require the individual to restrict such activity, or to make provision for adequate cost recovery.
11. Public Service activities and Consultancy and Contracted Advisory and Professional Service activities are subject to approval by an individual's Head of School or Professional Service Director, or by their line manager for Heads of School / Professional Service Directors and above.
12. Approval of external professional activities may be withheld where there are constraints on the member of staff's time and availability (e.g. external funding terms), or where it is not in the best interests of the University for the staff member to undertake the activity at that time, to ensure that the individual's primary duties are not adversely affected. Operational feasibility, contractual obligations, and employment legislation must all be considered before permission is granted. The University, through the Head of School or Professional Service Director, will be mindful of the individual's total workload, in particular in relation to legislation on working time.
13. Consultancy and Contracted Advisory and Professional Service activities are subject to the additional conditions in Section B of this policy.

14. Where a member of staff undertakes, or seeks to undertake external professional activities without formal approval (where required), they may be subject to the disciplinary process as a breach of contract.

A.5 Financial Arrangements

15. Members of staff may retain the whole of an honorarium paid for Academic Professional and Public Service activities, and may choose whether to have the honorarium be paid to the University or be paid direct to themselves. If the honorarium is paid to the University and reimbursed to the individual, the University will deduct income tax and National Insurance and pay the amounts over to HMRC. If a member of staff chooses to accept a payment directly, the individual is responsible for declaring the income and accounting for tax and National Insurance to HMRC.
16. Income from Consultancy and Contracted Advisory and Professional Service activity is subject to the conditions in Section B. The University requires income from any activity that uses the University's resources, facilities, or name to be passed through its accounts (as Services Rendered activity). It also wishes to encourage this for all other consultancy, so that the institution is able to gain due benefit in external reporting, league tables and funding formulae. Doing so also helps the University to manage its risks and its external relations. Consultancy can be undertaken on a private basis under specific circumstances (see B.3).
17. Any payments made to individuals from External Professional Activities are not superannuable.
18. The University's Financial Regulations apply to external professional activities.

A.6 Registering External Professional Activity

19. Members of staff are encouraged to record all of their external professional activity (whether paid or unpaid) in their Sussex Direct profile, so that it is officially recorded and can be taken into account in any relevant reporting. Records of external professional activity will be taken into account, as appropriate, in the promotion and reward processes, as defined in the relevant policy statements.
20. Recording of Academic Professional and Public Service activities is the responsibility of the individual. Consultancy and Contracted Advisory and Professional Service activities will be recorded through the approval process by interaction with Research & Enterprise Services (RES), whose system will feed the information into the Sussex Direct profile. All staff undertaking external professional activities should therefore ensure that they have a Sussex Direct profile.

[Paragraphs 19 and 20 will apply once appropriate facilities are in place in Sussex Direct.]

B. Consultancy and Contracted Advisory and Professional Services Activities

21. The following conditions apply specifically and only to consultancy and contracted advisory and professional services activities, hereafter referred to as consultancy.

B.1 Definition of Consultancy

22. Consultancy is normally characterised as an activity where an individual is required to provide the benefit of their personal knowledge, experience, or skills in a particular field, usually on a sole basis. It will typically be a small number of days, and make

limited use of University facilities (the cost of which must be recovered in full). Consultancy generally makes use of University intellectual property or know-how, and generates information or data specific to the customer. It would not normally generate results equivalent to those from a research project. The results of consultancy would normally belong to the customer.

23. Consultancy is a subset of Services Rendered activities. Services activities include trading and accommodation, conference services, consultancy, intellectual property, facilities and equipment access, training and CPD, experimental and analysis services, prototype production, supply of goods, material transfers, and course validation.
24. For the avoidance of doubt, knowledge transfer and knowledge exchange activities encompass a range of services, including consultancy, but can also include certain research activities, such as collaborative and contract research, and projects funded under the Knowledge Transfer Partnership scheme.
25. As guidance, the following table provides some indication of activities that are consultancy, in this context, in comparison to others that are provision of other types of services.¹

Consultancy	<ul style="list-style-type: none"> • Advice to a company on its research, product development, or manufacturing process • Member of a steering or advisory group of a commercial project or trial • Member of an advisory group for a public sector body for a specific project or activity • Interpretation of the results of analysis • Acting as an expert witness or undertaking assessments
Other Services	<ul style="list-style-type: none"> • Use of a standard process to provide an analysis of materials provided • Undertaking of a number of experiments to test a product or process (that does not amount to research) • Use of a standard process to provide one-off or limited number of products (e.g. wafer manufacture, supply of specialist reagents) • Delivery of training or continuing professional development courses • Access to facilities, space or equipment (supported or not)

26. Activities that employ staff or engage students for extended periods (e.g. to undertake experiments) are typically other services rather than consultancy. Other services activities are expected to recover their full cost to the University.

B.2 Benefits of Consultancy

27. The aims and benefits of consultancy activity can be:
 - Building and maintaining commercial relationships and activities;
 - Creating the potential for future research funding;
 - Opening up possibilities for student projects;

¹ The terminology used in any agreement with an external customer may or may not be relevant in terms of classification of activity as being consultancy for the purposes of this policy.

- Creating links for graduate employment;
 - Staff motivation and career development;
 - Feedback into research and teaching;
 - Awareness of industry or policy developments and technological, product, process and policy innovation;
 - Personal and University income.
28. Consultancy activity and income is measured as part of the HEFCE HEIF² formula, and hence its inclusion in University records has an impact on institutional income, and also league table positions. The University therefore encourages all staff consultancy activity to be recorded through the University's accounts.

B.3 General Principles for Consultancy

29. All consultancy activity relating to a person's employment (i.e. in the subject area or using the skills / experience for which they are employed) must be registered and appropriately authorised.
30. All consultancy activity using University facilities, resources, or name must be carried out under an institutionally-authorised agreement between the University and the customer, with the funds flowing through the University's accounts (as Services Rendered activity).
31. Members of staff are permitted to undertake consultancy activity on a private basis (having been registered and approved), but must make no use of University facilities, resources or name, address or headed paper. The University will not provide any professional indemnity insurance or accept any other liability for staff undertaking consultancy on a private basis. Staff must make it absolutely clear to their external customer that they are doing so as a private individual rather than as a University employee. The University will not accept any risk from such activity or hold out any involvement.
32. Whilst private consultancy is permitted, the University wishes to encourage staff to undertake their consultancy activity using institutionally-authorised agreements, with the funds flowing through the University's accounts.
33. These provisions include such work outside "normal" office hours as it is deemed still to relate to the person's employment. For part-time staff, such activities may take place outwith their contracted time, so long as the individual is not, directly or indirectly, using the University's name or the fact of their employment by the University to receive and undertake the work. Improperly using one's University employment status is a disciplinary matter.

B.4 Approved Level of Consultancy Activity

34. All academic and related staff are permitted to undertake up to 30 days consultancy activity (University and private in total) per annum (financial year) (pro rata for part-time staff), subject to the agreement of their Head of School or Professional Service Director (or line manager for senior staff), and subject to the terms of any specific funding that is supporting their post. Agreement to consultancy activity will be dependent upon operational feasibility (including a holistic view of workloads), taking account of contractual obligations, and being mindful of employment legislation,

² The Higher Education Innovation Fund, which provides core funding to support knowledge exchange activities / capacity.

including the working time directive. Human Resources will provide advice where necessary to assist this decision.³ Heads / Directors will also be mindful of the benefits arising from consultancy activity, to try to ensure benefits to the unit are maximised. For the avoidance of doubt, for part-time staff, the pro rata equivalent of up to 30 days consultancy activity refers to approved activity taking place within their fractional contracted time.

35. Where it is desirable for the School or Professional Services Division that a member of staff spends more than 30 days per annum on consultancy activity (pro rata for part-time staff), the activity over the 30 days must be undertaken as University consultancy with full cost recovery to the School or Division. If the activity operates at a profit, that profit will be shared with the member of staff using the standard split for Services⁴.

B.5 Registration and Approval of Consultancy

36. Members of staff are required to register and gain approval for their consultancy activity, whether it is being operated through the University or on a private basis. The process of deciding whether an individual is permitted to undertake a piece of consultancy, and whether the activity is consultancy, is generally handled at a local level (School or Professional Services Division). RES will provide advice where necessary to Heads of School and Professional Service Directors in reaching a decision about the classification of a particular piece of work. Agreement for senior staff is provided through the normal line management structure. For staff in clinical positions, the agreement of the relevant Trust will also be required.
37. For consultancy being operated through the University, standard University agreements should be used wherever possible, as is practised by other professional and consultancy organisations. Agreements to undertake consultancy activity require review and signature by RES, who can provide guidance.
38. Where a specific unit, group or individual has frequent low-value, low-risk activity, the University may agree flexibility in approach to signature of customer-defined agreements. Such an approach will be subject to agreement by the Director of Research and Enterprise.
39. Consultancy (whether operated on a University or a private basis) will be recorded in the University's management systems by RES, and University consultancy will therefore also be available for inclusion in an individual's Sussex Direct profile, along with their other funded projects.

[Paragraph 39 will apply fully once the relevant system changes have been made, to the management systems and to Sussex Direct.]

40. Consultancy information will also be available to form part of the individual's conflicts of interest declaration, within their Sussex Direct profile.

[Paragraph 40 will apply once relevant changes have been made to Sussex Direct.]

B.6 Costing and Pricing of Consultancy

41. Consultancy activity should be costed on the following basis.

³ Queries should be raised with the relevant Personnel Officer.

⁴ See Approach to the Distribution of Income from Research and Knowledge Exchange Activities and the Allocation of Research Support Funds.

- i) The individual's time should be costed using an appropriate day rate.
 - ii) Any incidental costs should be identified separately.
 - iii) Any use of University facilities or other resources (e.g. another member of staff in a support rather than a consultant role⁵) should be costed using the normal full economic costing method, using institutional rates for "Other" activities. These costs must be fully reimbursed by the income from the activity.
42. The minimum day rate to use should be the FEC-based day or hourly rate for the grade of staff.
43. Where there is more than one individual involved as a consultant on a single piece of work, the relative split should be agreed before approval is sought.
44. Consultancy work should be priced to recover at least the total cost, but also taking account of the market value of the individual and their expertise. The University expects individuals to attract value equivalent to other professions. The University will not accept payment for consultancy in the form of equity, or other financial instruments.

B.7 Distribution of Income

45. Income from consultancy within the 30 days approved level of activity will be distributed on the following basis. Costs charged to the project account in relation to incidental costs or use of University facilities or other resources will be a first charge against the income.
46. The remainder of the income (i.e. the consultant's employment costs and the premium) will be split as follows: 85% to pay the consultant and associated employer's NI cost, 5% to the University to contribute to Professional Indemnity Insurance costs, and 10% to the School's Research Support Account.
47. The 85% available to the consultant can either be paid as a personal payment (inclusive of the cost of the employer's NI charge), or be placed in the individual's Research Support Account⁶. The decision concerning the treatment of the consultancy fee must be made at the time of approval, before work commences, otherwise it will be subject to tax under HM Customs & Revenue rules. Payments to the individual will only be made after the customer has settled and all other relevant costs have been met.
48. Payments to the individual will be made through the payroll after deduction of PAYE and National Insurance, unless the University has received in writing an instruction from HM Customs & Revenue that the individual's earnings (other than those arising from an office or employment) are subject to Schedule D, and therefore payable without deduction of tax at source.

⁵ Note that deployment of other staff in support of a consultancy may require additional payments to the individual concerned, e.g. for overtime.

⁶ Funds placed in a Research Support Account are not subject to personal taxation, and are available, subject to school oversight, to the individual for appropriate approved research activities, such as conference attendance, support of PGR students, and so on.

B.8 Insurance Cover

49. Staff will only be covered by the relevant University insurance where the activity is declared and approved before taking place, is operated under an institutionally-authorized agreement, and where the staff member has not breached any University policy or relevant agreement. Whilst the University's insurance policies encompass most activities and locations, they do have some exclusions, and work involving the following should be referred to the Insurance section in Finance Office before any agreement is signed:
- Any clause that extends the liability of the University;
 - Where the risk of pollution / landfill etc. is increased;
 - Any work to be undertaken outside the UK;
 - Where a claim may be made in the courts of the USA or Canada or their territories or possessions;
 - Where there are conditions that restrict the right of recovery;
 - Where designs / specifications or advice in relation to aircraft or aerial devices is involved;
 - Where use of vessels or crafts is involved;
 - Where prototype machinery is being supplied;
 - Where the proposed activity is sensitive or high profile.
50. The University's policies do not include cover for claims for penalties and liquidated damages. Acceptance of agreements including such terms will be a commercial decision on a case-by-case basis.
51. If additional premiums are required, they will be a direct, first charge against the consultancy income.

B.9 Personal Payments from Research or Services Contracts

52. Personal payments within a Research or Services contract are subject to separate guidance.

C. Directorships

53. Staff are permitted to accept appointment to directorships (including non-executive directorships) in third party and University companies, subject to approval, as set out below.⁷ Individuals undertaking such roles should note that they are personally liable as a director, and should ensure that they fully understand the legal responsibilities involved.
54. Staff in senior positions and staff in business development roles undertaking third party directorships in companies where the University has a direct shareholding are likely to have actual or potential conflicts with their University position. Such situations must therefore be carefully managed and monitored.
55. If any member of staff believes that such a role or any company share ownership is leading to an actual or potential conflict of interest, they should seek advice from the Secretary and Registrar, or the Director of Research and Enterprise. Where a member of staff is a director, they should not be directly involved in the University

⁷ Directorships undertaken in a personal capacity, e.g. for a company managing the individual's apartment block, are excluded from this policy, and are a matter for the individual.

decision-making processes relating to that organisation regarding procurement, contracting, investment, or disposal.

56. Executive directorships will normally only be approved where there is a matching reduction in the individual's University contracted employment.

C.1 Public Service Directorships

57. Public Service Directorships are where an individual holds a directorial position in a public body, a discipline or professional association, or a sector representative body. Such companies will typically be companies limited by guarantee. Some may also be charities, and hence individuals should be aware of the additional responsibilities of being a charity trustee. Such directorships are typically unpaid, but if there is an honorarium, it will be handled as with Public Service activities. Approval for this form of directorship is through the same route as for Public Service activities. Relevant insurance should be provided by the company, and cover will not be provided by the University's policies.

C.2 University Directorships

58. University Directorships are positions as a consequence of the University's ownership or involvement in a company. This may be wholly-owned subsidiaries created for operational purposes, or spin-out or start-up companies utilising intellectual property arising from the University. University Directorships are normally an assigned element of an individual's workload, and hence fall outside this policy's requirements. Any management fee paid by the company will be credited to the individual's School or Professional Service Division. Relevant insurance will be provided by the company or the University's policies, dependent on the circumstances.

C.3 Inventor Directorships

59. Inventor Directorships arise where an individual becomes a director as a consequence of the commercialisation of their research, usually through a spin-out company. In such circumstances, the individual will have received equity in the company, and is unlikely to receive further payment as a director. If payment is made, it is handled as for Consultancy activity. Relevant insurance should be provided by the company, and cover will not be provided by the University's policies.

This policy was approved by Council on 2 July 2010, with an amendment for clarification to Clause 34 agreed on 26 November 2010.