Supporting Individual Staff Consultancy (outside work) at Durham University

The document proposes a new approach for the management of all future consultancy work by individual staff members. Slight amendments and clarifications were agreed by Council in December 2006

Background

1. As a commitment to the transfer of knowledge from Higher Education to other sectors, universities are increasingly involved in “third stream” or outreach activities alongside their more established research and teaching functions.

2. Durham University recognizes that consultancy/outside work is an important part of this outreach activity and that encouragement and clear guidance will benefit staff planning to undertake such work.

3. The skills and experience that enable staff to excel at research and teaching/learning are not necessarily the same skills and experience that enable staff to excel at consultancy. The University is, therefore, committed to helping staff foster, through continuous improvement, the right attributes for making the most of consultancy opportunities while:
   - Maintaining and improving the University’s excellence in research and teaching/learning.
   - Ensuring that issues such as intellectual property rights and personal and institutional liability are managed effectively.

The Benefits of Individual Staff Consultancy

4. Consultancy activity by individual members of staff benefits both the individual and the University. Consultancy enables University knowledge to be transferred to business and the wider community; it is a key part of our outreach work. It encourages staff to think in enterprising ways and broadens their work experiences. Consultancy also generates income for the individual and the University. Specific benefits for individual staff members include:
   - Opportunities for additional personal income.
   - Opportunities for industrial and commercial collaboration and building new relationships within the public and private sectors.
   - Generating funding for departments and schools.

Specific benefits for the University include:
   - Increased “third stream”/outreach activity leading to increased government funding for this kind of work.
   - Additional external relationships.
   - Improving and raising the profile of the University with businesses and other communities.

Managing Risk

5. Consultancy work, however, also generates risks that need to be managed to acceptable levels. For example, the lack of a written contract and/or inadequate specification of the work involved may lead to disputes between the University and its customers. Possible damage to the University’s reputation and financial loss can arise if consultancy work goes wrong. These risks can be managed, and the University/individual staff protected through professional indemnity insurance.
6. The University Audit Committee has previously considered the management of University consultancy activity and recommended\(^1\) that the University:

(a) Takes steps to reduce risk that might arise from members of staff undertaking “private” consultancy.

(b) Establishes a company through which the contractual arrangements of members of staff undertaking “private” consultancy might be channelled.

7. In a landmark legal case involving an employee of the University of Nottingham, that University was judged to be liable for the employee’s negligence even though the employee and the University considered the employee to be acting in a private capacity. Subsequent legal advice to Durham University suggests that risks to both the University and its employees will be substantially reduced if consultancy is managed by the University.

8. Council has previously considered how the University manages consultancy work by individual staff members and approved changes of principle in the methodology for the approval and management of consultancy by academic staff\(^2\). These changes envisaged the setting up of a University consultancy management company. However, it is now felt that the risks involved in consultancy can be effectively managed through an “in-house” operation, without the need for a company.

**Types of Consultancy**

9. There are several types of consultancy undertaken by the University and its staff:

- Consultancy work undertaken in the University’s name by individual members of staff;
- Consultancy undertaken by individual members of staff at the University in their own name i.e. private consultancy
- Consultancy work undertaken by consultancy units in or related to academic departments eg Archaeology; Maths and Statistics; CEM centre;
- An academic or group of academics responding on behalf of the University to an external tender;
- The commercial use of University equipment and facilities eg analytical services;

10. This document is concerned with consultancy by individual members of staff i.e. the first two types of consultancy. The Nottingham judgement means that legally there is no difference between consultancy undertaken by individual staff either in the University’s name or as private consultancy. They should be regarded as the same.

**Definition of Individual Staff Consultancy**

11. Individual staff consultancy is the provision by University staff of remunerated expert advice (including acting as an expert witness) or professional services relating to their University appointment. It is provided to external clients that can include both public and private sector organisations and the voluntary/charitable sectors. While consultancy may involve a degree of analysis, measurement or testing, it is dependent on a high degree of intellectual input. Consultancy can involve the use of University facilities and this would need to be reflected in the price of and payments for consultancy work.

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\(^1\) On 21\(^{st}\) November 2001 following published advice from Universities UK (“Optimising Consultancy: A Good Practice Guide to the Management of Consultancy in Universities and Colleges”)

\(^2\) 9\(^{th}\) July 2002.
12. Certain activities are specifically excluded from this definition of individual staff consultancy and these are set out in Annex 1.

Eligibility for Individual Staff Consultancy

13. All academic staff, research staff and academic-related staff who have specialist and marketable expertise enabling them to act as consultants are potentially eligible to undertake consultancy work.

Current Arrangements for Managing Individual Staff Consultancy

14. Currently, individual members of staff who wish to undertake consultancy work can do so for up to 24 days a year by seeking written approval from the Vice Chancellor. Although this system has served the University for many years, changes in the University’s operating environment such as the Nottingham case and the expectation that the University will be involved in "third stream" activity have necessitated a rethink of the University’s approach to managing consultancy undertaken by individual staff members.

A New Approach to Managing Individual Staff Consultancy

15. The University is introducing a new approach to managing individual staff consultancy and the risks associated with it. This will involve a new application/approval process which is set out in Annex 2. The main difference between the proposed new approach and the current approach is that the approval of consultancy requests will be managed through REDSS rather than through the Vice Chancellor’s office. The working norm of up to 24 days per annum for such works remains unaltered.

16. The new approach will start at the beginning of the 2006/07 academic year and will have the following advantages:

- Advice and guidance to individual staff members undertaking consultancy work
- Reduced risk to the individual and the University.
- Better information about the scale and extent of the University’s impact on the wider community. HEFCE is increasing the monitoring of university outreach work and requires statistics to be returned on consultancy activity through the annual HEFCE Higher Education Business and Community Interaction Survey (HEBCIS). Consultancy data now needs to be collected on a regular and systematic basis.
- A simple and quick application process.
- Each consultancy project will be backed up by a written agreement between the University and the customer.
- Advice on costing and pricing will be available.
- Invoicing and payments will be arranged by REDSS.
- Professional indemnity will be provided through the University’s insurance cover.

Administration Fee

17. An administration fee equal to 10% of the price of the consultancy work\(^3\) will be added to the cost of the consultancy. This is in line with most other research-led universities and is at the

\(^3\) For contracts greater than £20,000 the fee will be capped at £2,000. This cap will be regularly reviewed.
bottom end of the fee range charged by other universities. In return members of staff will receive the following benefits:

- Advice and guidance including assistance with costing and pricing;
- A written contract to protect the financial and academic interest of the University and the staff member;
- Preparation and issuing of invoices, and credit control;
- Provision of professional indemnity cover;
- Arrangement of payment of consultancy fees

**Private Consultancy**

18. The presumption is that all members of staff will use REDSS if they wish to undertake individual consultancy work. Should a member of staff wish to undertake private consultancy then, in order to mitigate the liability on the University, the member of staff in each case must:

- Sign, and obtain the client’s signature on, a disclaimer of liability letter (see Annex 3) informing the client that there is no contractual relationship with the University of Durham and no liability on the University for the work being undertaken;
- Complete and submit to REDSS a Private Consultancy Standard Waiver Form informing the University of the consultancy work;
- Obtain permission to undertake the consultancy from the Head of Department via a signature on the Standard Waiver Form.
- Undertake all of the administration themselves, including the provision of indemnity insurance.4

**Management and Governance**

19. The management of individual staff consultancy will be part of the University-Business collaboration activity supported by REDSS. It will also be part of the Knowledge House network involving all of the Region’s universities and will be branded “Durham University Knowledge House”.

20. Individual staff consultancy will be managed through a Consultancy /Knowledge House manager (with clerical assistance) who will report to the Head of Regional Regeneration in REDSS.

21. Governance will be via the existing University Regional Outreach Steering Group which meets once a term and comprises the DVC, Treasurer, all Deans, Director of REDSS, Director of Technology Transfer and the Head of Regional Regeneration.

**Costs and Other Implications**

22. The costs of introducing the new approach (the provision of a Consultancy Manager (ALC3), clerical support and a small non-staff budget) will be covered by the Higher Education Innovation Fund which is core funding from HEFCE to the University in support of outreach and business collaboration activity. Any revenue raised, e.g. from the administration fees, will be used to offset costs.

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4 The member of staff must demonstrate to the University’s satisfaction that they have the necessary indemnity insurance to cover the work. No indication should be given that the outside work is undertaken in anything but a private capacity. University resources e.g. University branded paper and University general IT equipment must not be used, neither must University specialist equipment be used.

Ref C 06 34
23. Amendments will need to be made to the University’s HR and REDSS websites and staff guidance documents to reflect the changes in University policy on consultancy and outside work as set out in this report.

**Recommendation**

24. Consultancy and outside work by individual staff members is a key part of the University’s “third stream” activity which helps to transfer knowledge from Higher Education to other sectors. This report proposes changes to how consultancy is managed which will benefit both the University and individual staff members. In particular, the changes encourage and provide support to those staff wishing to be involved in consultancy while helping to manage the risks involved.

25. **Council is recommended to approve the changes to the University’s policy on consultancy and outside work as set out in this report**

*Director of REDSS 5th June 2006.*
Annex 1: Exclusions from the Definition of Individual Staff Consultancy *

The following are not regarded as individual staff consultancy:

- Royalties from the publication of books.
- Proceeds from articles published in journals.
- Refereeing of articles in learned journals.
- Fees for editorial duties.
- Reviewing book proposals or manuscripts for publishers or advising on publication.
- Peer reviewing research proposals for Research Councils and other research sponsors.
- External examining.
- External ad hoc lectures, conference presentations.
- Occasional contributions to press, TV and other media (substantial media commitments\(^5\) are included in the definition of individual staff consultancy).
- Service on public sector organisations, government agencies and charitable body committees.
- Lecturing on an occasional ad hoc basis (substantial lecturing commitments will be treated in the same way as substantial media commitments).
- Individual Consultancy for University Spin-Outs explicitly comes within the scope of the Individual Consultancy Policy

\(^5\) Whether a media commitment is substantial will depend on circumstances and the other academic commitments of the individual. The person giving the in principle approval for the consultancy (normally the Head of Department) will need to decide whether the media work is occasional (in which case it does not constitute consultancy) or substantial (in which case it is consultancy and the necessary approvals need to be obtained.)

The new approach to managing consultancy aims to be a collaborative approach with a Consultancy manager working closely with the individual staff members to maximise the opportunity and to safeguard the interests of the University and the individual. The intention is to identify and develop within individual staff the appropriate skills and knowledge they need to be successful in consultancy work.

The process by which staff apply for approval to undertake consultancy work will need to benefit from continual improvement in the light of experience and best practice from elsewhere. It is envisaged that, to begin with, key steps in the process will be:

**Step 1:** Staff provide key information on the proposed consultancy work by completing a standard form. Staff are encouraged to discuss their ideas for undertaking consultancy work informally with REDSS before making a formal application and completing the form.

**Step 2:** Staff seek approval in principle for the consultancy work from their Head of Department who provides this by countersigning the form. If Heads of Departments or Research Institutes or Colleges wish to undertake consultancy work they should seek consent from their relevant Divisional Head. Divisional Heads, PVCs, and the DVC wishing to undertake consultancy work should seek approval from the Vice-Chancellor. The Vice-Chancellor would seek approval from the Chair of Council.

When considering a request to undertake consultancy, it is important that the person approving the individual staff consultancy in principle is satisfied that the work does not conflict with other University aims and objectives. Guidance on conflict of interest is set out below.

**Step 3:** Once ‘in principle’ approval has been granted, the form is passed to REDSS which:

- **a)** Confirms that:
  - The form is completed properly and the proposal meets the definition of consultancy.
  - The proposal is appropriately costed/priced (applicants are advised to seek guidance on completing the forms and pricing prior to making an application).
  - The staff referred to in the proposed consultancy are covered by the University professional indemnity insurance.
  - The proposed consultancy does not give rise to a conflict of interest.
  - IPR issues are understood and University IPR will be protected.

- **b)** Inputs the form to the consultancy database.

- **c)** Informs the applicant in writing that the consultancy is approved.

- **d)** In collaboration with the staff member, drafts a contract and obtains necessary signatures from the customer and the relevant University signatory.

- **e)** In collaboration with the staff member, monitors progress on the consultancy work and identifies when the work is complete.

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6 provided that all checks are satisfactory – unsatisfactory checks are referred back to the applicant and, depending on the problem, the Head of Department. Approvals for work extending over 12 months will be subject to an annual review.

7 the Director of REDSS.
f) **Invoices the customer** (when the work is complete) and ensures payment.

g) **Applies an administration fee** (see below).

h) **Arranges for payment** (apart from the administration fee, there will be no “top-slicing” from the payment received. Applicants can opt for personal payment via PAYE, or payment into a nominated Research Centre, Charity or their department).

i) **Undertakes a customer satisfaction survey.**

j) **Reports Consultancy activity** e.g. annually to HEFCE through HEBCIS and internally.

In the event that the application is refused, the applicant may appeal to the Deputy Vice Chancellor, whose decision will be final.

**Conflict of Interest**

To avoid the consultancy work conflicting with other University aims and objectives, the person giving in principle approval should check that:

- The proposal is consistent with the member of staff’s other contractual duties, and will not impair their satisfactory conduct, or the conduct of work carried out by others.

- There is no identifiable conflict of interest, potential conflict of interest or conflict of commitment.

- The work is not directly competing with other consultancy work undertaken by the University.

- The proposed work does not conflict with other identified work priorities.

- The proposed work is not more appropriately undertaken as consultancy work through a University Consultancy Unit, University Research, the commercial use of University equipment/facilities or University Teaching.

- The proposed work will not pose a risk to the University’s reputation.
Annex 3: Standard Waiver Letter to Client

<Client Name> <Consultant Home Address>
<Client Address>

<Date>

Dear <Client>

<Assignment Title>

With reference to my work on the above assignment I am required by University of Durham as my employer to advise you that I shall be acting in an entirely personal capacity and not for or on behalf of University of Durham. While University of Durham permits its academic staff to undertake private consultancies subject to prior approval, which I have obtained from my Head of School, once approval has been given University of Durham exercises no control or supervision over the actual performance of the work. Consequently University of Durham cannot accept responsibility for the work I do or for the advice which I give in connection with the assignment and accepts no liability for any acts or defaults on my part, whether negligent or otherwise. In the event of any conflict between the provisions of this letter and the terms of any other contract between your company and myself this letter will take precedence. Please countersign and return one copy of this letter to me.

Yours truly,

Countersigned by

Consultant Name (print) Name (print)
Date of Countersignature