



All Staff Consultancy Policy

Responsible Office	Research Support Office
Responsible Officer	Dr Louise Maythorne
Approval authority	Research and Ethics Committee (REC)
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Amended (if applicable)	
Related Procedures	Intellectual Property policy
Related University Policies	
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1 Purpose

- 1.1 In the University sector as in many others, there is an increasing recognition of the commercial value inherent in staff expertise.

At Bath Spa channelling that expertise through consultancy opportunities is both recognised and rewarded for the status it brings to the institution, the individual or individuals delivering the work as well as the income it generates.

The University is committed to the active encouragement and support of staff in this sort of endeavour. It welcomes collaboration with partners through the commercial application of staff expertise and knowledge and seeks to ensure that the experiences of all involved in the process are positively and professionally engaged with.

- 1.2 This document sets out the University's approach to consultancy. In brief its aims are:
- 1.2.1 To encourage consultancy activity where appropriate, on the understanding that it is a choice and not an expectation of staff to undertake.
 - 1.2.2 To ensure that staff are provided with the appropriate support for their activity and that their interests are well protected
 - 1.2.3 To ensure that consultancy clients are provided with a comprehensive and professional service
 - 1.2.4 To ensure the protection of University interests and that its research and teaching activity is enhanced by consultancy.
 - 1.2.5 To help to raise the profile of the University in both professional and academic communities
- 1.3 There will be an annual review of the Consultancy Policy to ensure that it keeps its relevance to the changing needs of the sector.

2. Definitions of Consultancy

2.1 University Consultancy

- 2.1.1 University Consultancy refers to the application of already possessed specialist knowledge or expertise by a named individual or group of individuals, to a brief detailed by a paying client.
- 2.1.2 In most circumstances, consultancy activities will refer directly to the person or persons engaged to deliver the work but it may at times, also extend to include other facilities found at the University including HR, Finance, Administration and Professional Services, or use of studio space etc. The precise nature and content

of the consultancy being undertaken and the range of resources used will be specified in the contract.

2.1.3 The University consultancy service is provided to private, public or third sector organisations or to individuals. It is normally, but not always of short duration and time limited. In some cases, consultancy can be undertaken to support existing missions and partnerships of the University, used to create new frameworks for future collaborations or may form part of a REF submission or it may be a purely commercial venture. If you consider your consultancy to have the potential to form part of the University's REF submission, please discuss this with your research coordinator and / or line manager.

2.1.4 Examples of possible consultancy work undertaken by the University may include:

- Undertaking a paid advisory role of significant duration, standing or remuneration
- Investigation and analysis work such as soil or air sampling
- The development of a new product/technique/ information resource that will be of use to the client
- The production of commissioned artwork, software or musical composition
- Acting as an expert witness
- Undertaking regular teaching or supervision for an external organisation
- Evaluating the impact of a client's programme of work

Please note that this list is a non-exhaustive list.

2.1.5 While undertaking University Consultancy can be extremely advantageous to both the institution and the individual it would not be so the case if the individual was put under severe strain by delivering it; therefore it is strongly advised that an open discussion with the relevant research coordinator and / or line-manager is had prior to commencing the work and formal agreement is given. Agreement for individuals to undertake consultancy work will not be unreasonably withheld, but does form part of the process of good workload planning.

2.1.6 For information, considerations influencing the decision will include:

- whether the consultant has sufficient capacity in their workload to complete the work.
- whether the work undertaken would be considered beneficial to the reputation of the University's standing,
- whether the fee charged contains sufficient budget to cover the costs of any teaching buy-out required in order to complete the piece of work
- whether the work undertaken is within the maximum income for private

consultancy agreed for Senior Staff as set out in section 2.2.6 below.

2.2 Private Consultancy

2.2.1 Private consultancy refers to the application of expertise in an entirely private arrangement between the member of staff acting as a consultant and the client.

2.2.2 Staff working a .8 contract or above and who wish to undertake private consultancy are advised to inform their relevant research coordinator and/or line manager prior to accepting the work.

2.2.3 Discussing such activities with the appropriate research coordinator / line manager helps ensure that all staff understand that the University, while not liable for any work undertaken privately, has a duty of care towards its employees and in addition needs to clarify that there is no conflict of interest between the dual roles of employee and consultant.

2.2.4 Private consultancy could include:

- income generated by an individual from external bodies in a personal capacity
- income generated by representation of staff on various bodies and boards and through carrying out academic and civic responsibilities at other organisations, e.g. non-executive director roles.

Please note that this list is a non-exhaustive list.

2.2.5 Please note that private consultancy should not:

- be undertaken during contracted University working hours
- use any University office space, studio time or other facilities
- be facilitated by a University logo, email address, telephone, business cards or other material or reputational resources
- be brokered by the University
- disclose or use any intellectual property owned by University colleagues, or by the University itself without due consent and authorisation being given
- create or cause a conflict of interest between the staff members role as a public educator and researcher and the services they provide privately.

2.2.6 Private consultancy undertaken by Senior Staff, where the consultancy opportunity is directly linked to their University role, should be discussed with their Line Manager as set out in 2.2.2 above, and approval sought through using the Senior Staff private consultancy form attached as Annex I. In these cases, the exemptions set out in section 2.2.5 need not apply.

2.2.6 The maximum income for private consultancy that can be undertaken by Senior Staff is £15,000 per annum.

3. Support for University Consultancy

3.1 Institutional Support

3.1.1 By undertaking university consultancy, the member of staff is acting as a representative of the University and therefore supported in this capacity for the duration of each contract.

3.1.2 Support provided by the Research Support Office can include, but is not limited to the following:

- Identification of opportunities
- Costing of projects
- negotiating the fee
- drawing up contracts
- protection of intellectual property
- the provision of insurance cover
- invoicing clients
- management of budgets
- the use of all university facilities (as appropriate)
- management of Non-Disclosure / exclusivity clauses
- undertaking due diligence checks and seeking ethical approval

3.2 Staff seeking to undertake university consultancy should complete the form attached as Annex II (in consultation with the Research Support Office where appropriate) and submit it to their Head of School for approval.

4. Consultancy Income

4.1 University consultancy income for staff

4.1.1 Staff undertaking university consultancy receive the balance of the profit generated by the project after all central, school and direct costs have been accounted. This breaks down to an approximate split of 60:40 in favour of the consultant.

4.1.2 Consultancy fees for all projects are calculated by the Research Support office at Full Economic Cost (FEC). VAT is charged on consultancy services delivered by the University.

4.1.3 Any consultancy or commission which is costed at below FEC or using a different format must be signed off and agreed in writing by the relevant research coordinator and/or line manager prior to the commencement of the project. Details of this should be contained in the project proposal form along with the specific of the cost breakdown and reasoning.

4.2 The 60% balance of profit can be paid to the consultant in one of the two following ways.

4.2.1 Via payroll as salary – which attracts no restrictions as to how it is spent, but is subject to the normal Tax, NI, Pension deductions. To claim the balance of profit via payroll by making a TAXABLE EXPENSE CLAIM against the project code.

4.2.2 Via a personal development fund – which attracts no Tax, NI or Pension deductions but is subject to authorisation of its spend from the Dean or Head of Service and to both University and UK financial regulatory policy. For example; it can be spent on conference attendance, teaching buyout costs on other projects or on personal professional development activities but not on spousal attendance at conferences, nor the purchase of items for personal gain such as laptops for private home use.

A Personal Development Fund is set up at the end of each project to account for the share of the balance of profit the University consultant can claim. A specific code linking the project and the consultant is created and, can be accessed by making a NON TAXABLE EXPENSE CLAIM against that specific code.

Under current financial regulation the Personal Development Fund must be spent within academic year it is generated in. It cannot be carried over to the following year without Finance being made aware in advance. If the consultant wishes or needs to carry over any unspent balance from the Personal Development Fund, they should inform their appropriate line manager and Finance in good time before the end of the financial year to allow this to happen.

4.2.3 An estimate of the profit the consultant may receive can be provided at the start of the project if required. Please ask the Research Support Office.

4.4 Example of how a profit share may work.

Project Value inc VAT	12,000
VAT @ 20%	2,000
Net project Value	10,000
Direct costs	
Teaching buyout	4,000
Travel	500
Subsistence	500
Equipment e.g. room hire	1,000
External resources e.g. staff	1,000
Subtotal	7,000
Overheads at 20%	2,000
TOTAL	9,000
Surplus/(Deficit)	1,000
Balance for PDF / School	
Balance School @40%	400
Balance PDF@ 60%	600

5. Guidance Information, terms and explanations.

5.1 Full Economic Costing (FEC)

FEC enables the University to account for the cost of providing central support to the university consultant and enable them to undertake the work. Central support covers, among other things: contract negotiations, including IPR negotiation, project management (where appropriate), invoicing, project costing, marketing, insurance cover, purchase of equipment etc., and represents approximately 20% of the total fee invoiced.

5.2 Use of resources licensed to the University.

3rd party resources licensed or supplied to the University, e.g. Library databases and inter-library loans, cannot be used for the purpose of commercial research or consultancy except with explicit prior written agreement and arrangement with the University licensee (the Library Service). However in the case that staff require use of these resources for work where they receive a small honorarium payment only, this requirement is waived.

5.3 Professional Indemnity Insurance

5.3.1 Professional indemnity insurance (also called professional liability insurance) is a form of insurance that protects professional advice. If a client believes the consultant has made an error, given inaccurate advice or disclosed confidential data for example, then they can claim compensation. Professional Indemnity Insurance protects the consultant from the cost of any such claim.

5.3.2 All University consultancy is protected by the University's professional indemnity insurance. However, each project needs to be aligned to the standard terms and conditions for the insurance, and any particularly risky project is likely to require additional insurance cover; the cost of which will need to be borne from the clients' fee.

5.3.3 Examples of projects that carry particular insurance risk include:

- The creation of aerial devices
- Projects that carry nuclear risks
- Projects that carry the risk of environmental pollution

5.3.4 The exact terms and conditions of the University's insurance cover are available via the <https://thehub.bathspa.ac.uk/services/finance/staff/insurance/indemnity>.

It is the responsibility of the consultant to check that cover is properly provided by the policy and in the case of doubt they should email insurance@bathspa.ac.uk, copied to the Research Support Office on researchsupportoffice@bathspa.ac.uk.

5.3.5 Please note that private consultancy undertaken by University staff is not covered by the University's insurance

5.4 University Liability

5.4.1 Notwithstanding the protection afforded by professional indemnity insurance, a university consultancy contract will seek to limit the University's liability wherever possible.

5.4.2 For example, a contract:

- cannot preclude the University from the liability for death or personal injury resulting from negligence, or for fraud or fraudulent statements.
- OR make the University liable for indirect losses and losses arising out of any product or process that may be produced or adopted by the client as a result of the consultancy project
- OR provide the client with unlimited or uncapped liability for direct losses. (This is often linked to the consultancy fee and is normally negotiated).
- OR include warranties as to the specific accuracy or application of the deliverables being produced by the consultant

5.5 Ethical Approval and Risk Assessment

5.5.1 Many consultancy projects will contain ethical considerations and some will require particular attention such as, for example, those that require the consultant to work with:

- vulnerable adults or young children,
- sensitive data including medical, financial or personal data,
- living animals, tissue samples or volatile chemical materials.
- Environmental impact

Or on projects linked

- to alcohol and / or alcohol products
- to armaments, in particular their exportation
- to banks owed significant sums by third world countries
- to companies which are frequently in violation of international codes of marketing pharmaceutical or breast milk products

5.5.2 In addition to this, and in line with the University's Code of Fundraising and Donor's Charter, consultancy commissions in the following areas must be authorised by the relevant research coordinator and/or line manager, following approval by the appropriate School Ethics Committee:

- Pornography
- Child labour

- Slavery
- Illegal activity
- Companies whose main purpose is testing products on animals
- Sex industry
- Tobacco and related products
- Gambling (whether international, national or local)

In these instances, risk assessment must be undertaken and would sit alongside any ethical approval given.

5.5.3 A risk assessment also be undertaken if it is considered by the consultant and/or the relevant research coordinator and/or line manager that the work attracts a risk to the University.

5.6 Intellectual Property

5.6.1 The intellectual property procedure for consultancy projects is guided by the University's Policy on Intellectual Property Rights:
<https://thehub.bathspa.ac.uk/reference/staff-policies/consultancy-policy>

5.6.2 Intellectual Property Rights can be negotiated on a contract-by-contract basis. In most cases the default positions are as follows:

- The background intellectual property rights (the rights in the background knowledge brought to the project (that is developed by either party before or otherwise outside the project) remain the property of the respective parties. When the University consultant owns their own IP this will be retained by them; where the University owns the IP it will be retained by the University.
- The ownership of foreground intellectual property rights (the rights contained in the knowledge generated by the project) will depend on the nature of the relationship between the University/ Consultant and the client as set out in the contract. It is the University's policy to retain a share of ownership of intellectual property generated by university consultants; however, in some circumstances the client will require full ownership of them. Where this is the case, it will be stated specifically in the contract and the fee for the purchase of it included in but identified separately from the total fee for the consultancy / commission.
- However, where it is agreed that the client owns the foreground intellectual property rights the client will be asked to grant the University a perpetual and royalty-free license to teach and publish from the results of the project, unless otherwise stated in the contract.

5.7 Confidentiality

Some consultancy projects will require commercial confidentiality either on the side of the client or the University Consultant. In such cases, and as part of the

contractual agreement between the client and the University, a confidentiality provision or Non Disclosure Agreement will be produced.

5.8 Due Diligence

For projects above £10,000 in value and/ or for projects with overseas companies, the University will perform due diligence checks on the client. The cost of this will be borne by the client.

5.9 Non-delivery

Occasionally a piece of consultancy may not be completed as originally anticipated; either by mutual consent of both parties, or due to a change in circumstance for the commissioner or due to unforeseen issues arising for the consultant. The terms and conditions around how any of these situations are handled by the University will be detailed in the contract. Non-delivery often relates directly to the type of work being undertaken and therefore can be very specific to reflect this. University Consultants are strongly advised to keep in open dialogue with their appropriate line manager if they are experiencing any kind of difficulty in meeting the delivery outcomes of the work and in the event that a piece of University Consultancy cannot be delivered, and costs are incurred, liability will be as follows. University will be liable for 20% of the costs, the School for 20% and the consultant/s for 60% of the costs incurred unless previously otherwise agreed and specified on the contract.

5.10 Artists and Musical Commissions

Where an individual is commission for an artwork and this is undertaken through the University, each contract will be approached individually, as negotiations need to be undertaken to confirm the artist's fee, the material cost, inclusion or not of installation cost and IPR etc. A client may purchase a physical artwork but the default position for IPR of that work artist is that it remains with the artist unless otherwise agreed and specified in the contract's scope of works.

Annex I: Bath Spa University Consultancy Form

Section 1: Consultant Details	
Consultant Name	
School	
Please list the names of anyone co-delivering this consultancy project (BSU staff will need to complete their own forms)	

Section 2: Client details	
Client name	
Address	
Contact name	
Telephone	
Email	

Section 3: Dates	
Proposed start date	
Proposed end date	
Anticipated number of days	

Section 4: Project Details	
Please describe the work to be undertaken	
Please describe the project's deliverables	

Section 5: Estimated Project Costs	
Consultant hours/days (incl. prep time)	
Project administration	
Materials	
Travel and subsistence	
University facilities	
Teaching relief	
Estimated total	

Section 6: Have you agreed with your Dean/head of service that you may receive a share of the consultancy income?

Yes / No (please delete as appropriate)

Section 7: How do you wish to be paid for this work? (please delete as appropriate)

Via PAYE / Into my Professional Development Fund

Section 8: Ethical Approval

Does the project require non-routine ethical approval?	Yes	No
If yes, please describe the nature of the special circumstances		
If yes, please confirm that it has been approved by School ethics committee	Yes	No

Section 9: Insurance

Please confirm that the project complies with the terms of the University's insurance or that the Insurers have been informed of any additional cover required.	Yes	No
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Section 10: School Approval

Consultant	
Date	
Dean of School / Head of service	
Date	

Annex II: Senior Staff - Private Consultancy Form

Section 1: Consultant Details	
Consultant Name	
Title	
Please list the names of anyone co-delivering this consultancy project (BSU staff will need to complete their own forms)	

Section 2: Client details	
Client name	
Address	
Contact name	
Telephone	
Email	

Section 3: Dates	
Proposed start date	
Proposed end date	
Anticipated number of days	

Section 4: Consultancy Details	
Please describe the work to be undertaken	
Please give details of the fee agreed with the client	

Section 5: Line Management/Board of Governors Approval	
Consultant	
Date	
Line Manager/Board of Governors	
Date	