

**UNIVERSITY OF EDINBURGH
PROCEDURES FOR
CONSULTANCIES
AND SERVICE WORK**



1. Purpose

As an international centre of academic excellence, the University of Edinburgh is, through its staff, a respected source of academic and professional expertise which extends beyond the bounds of research and teaching activity as normally defined. Further, the University recognises and encourages the benefits which accrue to the institution as well as to the individuals concerned from links with industry, commerce, Government bodies and areas of professional service which consultancy can provide. These benefits lie in the enhancement of the academic/professional discipline which derives through knowledge transfer, practical application and experience.

The purpose of this document is to define the procedures to be used for the management of consultancy activities and service work, in a way which ensures these benefits while protecting the interests of both the University and its staff in a manner which reflects appropriate professional standards.

2. Scope

The provisions within this document cover all full-time and part-time members of staff. Where appropriate, pro rata arrangements apply for part-time staff.

3. Definitions

Consultancy

For the purpose of these procedures, Consultancy is defined as the provision of any advice, information, “in-company” training, acting as subject matter expert for an external organisation or other such professional service for a fee, except for activities in the following areas, whether paid or unpaid: -

- a. Reviewing publications
- b. Appearances in the media, e.g. television, or articles for general media publication, e.g. newspapers
- c. External examining duties for other institutions or professional bodies
- d. Acting in an advisory role for a publishing house, Research Council, Funding Council or charity, or their committees, or professional body associated with the individual's role.

Also specifically excluded are activities carried out by clinical staff which relate to the treatment of patients. It is the policy of the College of Medicine and Veterinary Medicine that full time members of academic staff may not engage in private practice for personal gain (although fees for private practice may be donated to the school or division). The procedures do apply where clinical staff participate in areas which do not relate directly to patient care (although there may be patient involvement), e.g. drug, equipment or clinical evaluations, attendance as expert witnesses, etc.

Consultancy may be further split into three different types, defined as follows:

i External consultancy

In which a member of staff provides a consultancy service to a third party (external to the University) in the course of his/her employment with the University and where the nature of the task arises naturally from, and is related to, his or her University employment. An external consultancy is one in which: -

- a. A University resource of any kind is consumed in obtaining or carrying out the work, and/or
- b. Legal liability lies, in whole or in part, with the University.

Expert witness work shall be governed by the same rules as any other external consultancy other than in the case of a legal citation.

ii Internal consultancy

In which a member of staff provides a consultancy service to the University. Such an internal consultancy arises where a staff member provides a consultancy contribution to a broader research, consultancy or service contract already separately held by the University. In this case the relationship is between the consultant and University, usually via a Principal Investigator. The relationship with the third (external) party has already been established in the research, consultancy or service contract itself. Except for this difference in relationship, its characteristics are the same as those of an external consultancy which are described above. Note that in such cases the agreement from the external funding body should be clearly documented.

iii Private consultancy

In which a member of staff provides a consultancy service to a third party, otherwise than in the course of his/her employment by the University, or arising naturally from, or related to, his or her University employment. It must also be clear that the work will be performed without using any University equipment or resource whatsoever and that there is no conflict with the interests of the University or a any conflict of interest has been disclosed appropriately and either eliminated or properly managed.

Service work

The provision of analytical, testing or other services for third parties involving any use of University facilities, equipment, IT networks, and staff resources. For the purposes of these procedures, all such work should be regarded as similar to External consultancy and be regulated as such.

4. Negotiation and Approval of Consultancy and Service Activities

In order to protect the University's charitable status, protect it from legal and financial risk, and to ensure transparency and consistency of treatment for all staff who may engage in consultancy activity, all external and internal consultancies must be negotiated through Edinburgh Innovations Ltd (EI), or through some other agency so authorised by the Director of Corporate Services.

EI is wholly owned by the University of Edinburgh. The company's remit is to market University resources, expertise and equipment; to commercialise research excellence into industry and exploit the Intellectual Property that is generated and to establish contracts for consultancy work. It offers services to external clients seeking specialist help from within the University and actively seeks to create opportunities for members of staff who wish to participate in consultancy activity. It also provides advisory, information, negotiating and contractual services to the University in respect of staff engaged or about to become engaged in consultancy work. Consultancy contracts are between the Court of the University of Edinburgh and the client and may be signed on behalf of the University only by a signatory to whom authority to sign such contracts has been delegated in accordance with the University's Schedule of Delegated Authority.

5. Aims of the Procedures for Consultancies and Service Work

These procedures are intended to address the following aims and concerns: -

i. Legal and financial risk

The nature of consultancy work is such that individuals and the University may be exposed to legal and financial risk especially with regard to the possibility of claims for damages on the grounds of professional negligence. The application or otherwise of insurance provisions, the contractual obligations and the consequences for the individual and for the University, must be clearly understood so that this risk is minimised.

ii. Conflict of Interest

There is a need to ensure that both the University and the individual member of staff are protected from the difficulties which may result when the interests of each are, or could be construed as being, in conflict. This arises most obviously in situations where the individual, in the course of his or her employment with the University, has privileged access to opportunities which would lead directly to the individual's personal financial gain or that of any connected person, or where the individual is in a position to influence the University's relationship with an outside body which, in turn, could lead to similar gain. In order to avoid such situations there is an obligation on the part of the individual to declare potential conflicts of interest and to seek advice and an obligation on the University to provide such advice. Staff must always act in accordance with the University's Conflict of Interest Policy (See HR website for policy and guidance).

iii. Relationship between Consultancy activities and University duties

While acknowledging the benefits derived from consultancy, individually and institutionally, a balance must be struck and maintained to ensure that these are not gained at the expense of University duties, and that the University is not exposed to unacceptable risks. Please note that where staff undertake internal/external consultancy (including service work) as their primary role, the arrangements for and the duration of such work and the extent and division of income will vary from those detailed in this procedure.

iv. Consultancy income and costs

The rules and mechanisms for the allocation of consultancy income require to appropriately reflect the range and nature of costs which may be incurred by an individual and by the University in the course of a consultancy.

6. Approval & Signature (External and Internal Consultancy)

i Approval

For both external and internal consultancies, approval must be obtained in advance from their Head of School, Head of College or Support Group or the Principal as appropriate, or the person formally delegated by them to deal with such matters.

This approval should include written agreement in respect of: -

- a. The nature of the proposed consultancy task
- b. The proposed timetable for the consultancy
- c. The details of University facilities or resource to be consumed (if any)
- d. The level of cost to be charged and distribution of monies.

In the case of internal consultancies (c) may already be established in the research or service contract to which the staff member is contracted. As far as internal consultancies are concerned, the requirement is to ensure that any impact the consultancy may have on the work of the individual, and hence the area in which he or she works, is planned.

In seeking approval, the individual must also disclose any outside activity, relationship or interest (including any financial interest), which might give rise to a conflict of interest (See section 5. ii above). In areas of doubt, there is an obligation to seek advice from EI by contacting the EI Consultancy Manager or a member of EI senior management as appropriate.

ii Signature

The requirement for obtaining approval is described above however authority to sign contracts on behalf of the University is a separate matter. All Consultancy and Service contracts governed by these procedures should be signed only by someone who has formally received delegated authority to sign contracts of this nature from the Chief Executive Officer of Edinburgh Innovations.

7. Duration and extent (External and Internal Consultancy)

Where approval is given to undertake consultancy/service work under the provisions of this document a member of staff should not spend more than an average of one day per week during semester, and two days per week at other times, in external or internal consultancy activity. The total should not exceed sixty days in a full academic year, but the days may be used en bloc subject to the regulations for Leave of Absence. In the unusual event of an individual wishing to develop his or her consultancy activities beyond the point where this might occur, movement to reduced hours (and salary) is an option which will be considered.

It is the responsibility of the Head of School, (or Head of College/Support Group or the Principal as appropriate) to ensure that the proposed consultancy does not conflict, in nature or extent, with the University duties of the member of staff concerned. As part of this procedure the written consent of the relevant Head of School (or other relevant officer as above) is obtained in relation to each consultancy.

8. Fee rates and pricing (External and Internal Consultancy)

EI produces guidelines annually on suggested fee rates that may be earned by University staff for consultancy work. (These are available on the EI web site.)

EI will normally carry out all pricing negotiations with the client. If a member of staff wishes to negotiate the total price (i.e. the gross income, exclusive of VAT), for the transaction directly with the client, this should be reviewed with EI at the earliest possible opportunity and before any final terms are agreed. Early involvement of EI is recommended as this will help to ensure that the fees to be charged reflect the market value of the services to be provided.

In agreeing the price, the following principles must apply: -

- a. Prices charged to clients should not be materially below those charged by commercial organisations carrying out similar work.
- b. The total price charged should reflect a fair return to the member of staff, the School and the University for resources used directly. For example, the total price charged to the client must account for costs in the following areas: -
 - Consultant's fee
 - Consumables
 - Travel and subsistence
 - Computing and/or equipment charges
 - Any other identifiable direct costs, e.g. secretarial services
 - Full contribution to other University indirect costs.

The implications for the Consultant and for the University of National Insurance and Income Tax liabilities in respect of their fees earned should be discussed with EI and dealt with before any price is discussed with the client (see also paragraph 11, Payment Arrangements).

In respect of internal consultancies, the price (constructed on a similar basis) will normally have been established in the main contract for the project and contained in the internal approval documents.

9. The Consultancy contract (External and Internal Consultancy) and contracts for services

Consultancy contracts for external and internal consultancies or services will usually be prepared using the standard contract terms which have been drawn up in collaboration with the University's legal advisers, insurance advisers and auditors. EI maintains and regularly updates these contracts and can provide draft documents upon request. In every case where a client's contract is used, EI's legal advisers must first have agreed its terms before they are presented for signature. Wherever possible it is highly recommended that University standard contracts should be used.

10. Division of income (External and Internal Consultancy)

After the deduction of any direct costs the standard division of fee income is as follows: -

Individual member of staff / consultant:	70%
College / School / Centre:	15%
University of Edinburgh:	15%

The division of fee income between the staff member and the School may be varied by local agreement at the point the contract is drawn up. Variations will only be made by agreement among the Consultant(s) and their Head of School, Head of College / Head of Support Group or the Principal as appropriate. In respect of a staff member's share of fee income (70% or less, subject to variation by agreement), it is then possible for a Consultant to elect to 'forego' or 'waive' all, or a proportion of fee income and nominate a School or Centre account for the funds to be allocated to. Any such formal waiver must be entered into before EI issues the consultancy invoice to the client.

11. Payment Arrangements: (External Consultancy)

The University has authorised EI to issue invoices in respect of consultancy and other services rendered.

Applicable from 30th September 2017

EI will issue such invoices and will also be responsible for arranging for payments to be made to Consultants and to the College, Schools or Centre. Payments due to members of University staff will only be made through the University's Payroll Office, who will make appropriate statutory income tax and National Insurance Contribution deductions before including the net amount payable in the appropriate net monthly salary payment. Payments to University staff will not be released before monies in respect of the consultancy invoice have been received from the client by EI.

12. Payment arrangements (Internal Consultancy)

All fee payments to staff members in respect of internal consultancies must be made by the Payroll Office through the main University Payroll.

13. Private Consultancy

Private consultancy occurs when a member of staff enters into a consultancy arrangement with a third party: -

- Other than in the course of his or her employment with the University, and
- In his or her 'own time', and
- There is no conflict of interest or such a conflict has been disclosed appropriately and either eliminated or properly managed, and
- Which does not consume any University resources, and
- In which the individual does not represent the University, and
- From which the University receives no financial benefit.

Such consultancies are the responsibility of those staff who enter into them, and they must understand that no cover is provided by the University's Professional Indemnity Insurance provisions.

However unless certain steps are taken the University could be exposed to the attempted pursuit of claims in delict (whether or not by vicarious liability). As an institution which derives most of its income from public funds, it is especially important that the University minimises its exposure to such risks.

A member of staff undertaking a private consultancy does so at his/her own risk and without any approval or authorisation from the University. If a member of staff chooses to undertake a private consultancy, the member of staff must: -

1. Use only their home address for all contractual and other correspondence relating to the private consultancy.
2. Include the following disclaimer in all correspondence, including publicity and advertising materials such as websites, relating to the private consultancy: -

Please note that the services are provided by [insert name of member of staff] acting in a personal capacity. [insert name of member of staff] is not, and shall not be deemed to be, acting as agent or employee or representing in any way the University of Edinburgh. Accordingly, you and your company, by accepting the services, (i) acknowledge that the University of Edinburgh has no responsibility or liability for the services and (ii) is deemed to have waived any right or entitlement to pursue or instigate any claim or action against the University of Edinburgh for any injury, loss or damage you or your company may sustain as a result of [insert name of member of staff] undertaking the services for you or your company.

3. Not use University of Edinburgh headed paper or a University address in any contractual and other correspondence relating to the private consultancy.
4. Not use a University email account (i.e. one containing the domain ed.ac.uk) or University web page (i.e. one containing the domain ed.ac.uk) in promoting or undertaking the private consultancy.
5. Not seek legal advice from the University's solicitors, or the EI legal team in respect of the contractual terms of a private consultancy.

Significant failure by a member of staff to comply with any of the foregoing requirements may result in the University taking appropriate action, which may include initiating disciplinary proceedings, or raising a legal action to recover any financial loss incurred.

14. Further Advice

Any staff member proposing to engage in consultancy activity and who is in doubt about the application of these procedures should contact EI for advice and assistance.

15. Approval and review

This policy was approved by CJCNC on 12 December 2017 and takes effect from 30 September 2017. This version replaces all previous issues of this policy. This policy will be reviewed by December 2019.