

UNIVERSITY OF EDINBURGH PROCEDURES FOR CONSULTANCY



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 that accrue to the institution as well as to the individuals concerned from engagement with industry, commerce, public sector organisations, 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 by staff. It is intended to foster interactions with external stakeholders while protecting the interests of both the University and its staff in a manner that 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 advice of any kind, information, acting as subject matter expert for an external organisation or other professional services for a commercial fee. Key features of consultancy and services rendered activities are:

- a. Application of existing know-how or expertise of staff or a small group of staff, rather than the creation of new knowledge
- b. Focus is on the client's specific business or products
- c. Similar services could be provided by the private sector
- d. Financial structure that recovers in excess of the salary and direct costs and a reasonable proportion of overheads
- e. The outputs are confidential to the client
- f. Neither the University, nor its staff, seek rights to publish the outputs or reuse them in their research or education activities.

Expert witness work is governed by the same rules as any other consultancy. Typically consultancy is solely based on the existing 'know how' of a staff member or a small group of staff. It does not involve the use of physical resources of the University, such as laboratories, reagents, technical

staff, bespoke computer programmes (beyond access to common knowledge resources such as the library, literature, email and widely-available computer programmes). The outcome is often confidential to the contracting body, and neither the University nor its staff seek rights to publish the outputs or reuse them in their research or education activities.

Consultancy is distinct from activities in which University facilities or resource of any kind is used in carrying out the work. These activities are therefore outside the scope of this document. Such activities are:

a. Service work

This involves the provision of analytical, testing or other services for third parties involving any use of University facilities, equipment, IT research capabilities, data sets of any description and associated staff resources. Typically the work is initiated/co-initiated by and confidential to the contracting party, which owns the outputs including any IP generated. The activity may or may not produce new knowledge. The University would not normally seek rights to publish the outputs or to reuse them in their research or education activities. Such activities should be arranged through Edinburgh Innovations Ltd (*EI Ltd*).

b. Contract Research with industry and other 3rd parties

This involves research initiated and funded by commercial (or occasionally non-commercial) organisations outside the conventional governmental (e.g. UKRI), public sector (e.g. NHS), charitable and EU sources of research funding. It includes active research or the use of University resources beyond the 'know how' of the principal investigator. The outcome is typically confidential to the contracting body which owns the results including any IP. The University would not normally seek rights to publish the outputs or to reuse them in their research or education activities. Such activities should be arranged through *EI Ltd* and treated as 'industry research'.

c. Collaborations with industry and other 3rd parties

Research collaborations with commercial partners is funded by industry but arises from mutual interest of University and industry staff. Again, this includes active research and/or the use of University resources beyond the 'know how' of the principal investigator. The outcome may be shared with the University and its staff, as may be any resulting IP. Nevertheless, such activities should be arranged through *EI Ltd* and treated as 'industry research'. Such collaborations should include costs for the principal investigator's time which should not normally be claimed on a consultancy basis. The terms should be arranged through *EI Ltd*.

Exceptions from Consultancy

- *Scholarly work for external clients*

Examples are set out below of external work which is closely linked to the academic role and purpose and/or forms part of wider academic endeavour. In practice, any contractual and modest payment arrangements (e.g. honoraria) are between the external organisation and the individual staff member directly (e.g. non-commercial organisations or bodies, professional societies, other academic institutions or academic publishers), in respect of the activity:-

- a. Reviewing or editing scholarly outputs for journals and other published academic media
- 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.
 - e. Lecturing or other presentations at academic conferences
 - f. Arts performances
 - g. Authorship of, or royalties from, the publication of books
- *Clinical activities of medical academic staff*

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.

However, consultancy procedures do apply where clinical staff participate in areas which do not relate directly to patient care in the NHS (although there may be patient involvement), e.g. work with drug, device or medical data companies, clinical evaluations for companies, attendance as an expert witness, etc.

- *In-company training, custom programmes (ExecEd) CPD, short courses etc.*

The majority of course programmes, and certainly the credit-bearing course programmes of the University, advance the University's educational charitable purpose and clearly do not meet the definition of consultancy.

For any non-credit bearing education programmes (e.g. online courses for external release, non-credit bearing CPD) and custom programmes, the University is required to consider the educational merit of the training/course programme, in terms of whether it satisfies the principles of public benefit education or, whether it is educational consultancy.

Where a commercial course sponsor takes ownership of material developed, or the material is wholly unique to that commercial customer ("closed courses"), it will be treated as educational consultancy and any such activity must be arranged through *EI Ltd*. Contracts for provision of courses outside the University should also be negotiated by *EI Ltd*.

4. Negotiation and Management of Consultancy Activities

Edinburgh Innovations Ltd (*EI Ltd*) is a wholly owned trading subsidiary of the University of Edinburgh. The company's remit is to lead the University's interactions with industry at all levels from consultancy, through contract and collaborative research with industry to IP, licensing and company formation. All university consultancy activity must be negotiated through *EI Ltd* in order to:

- protect the University's charitable status
- safeguard staff and the University against legal and financial risk
- ensure transparency and consistency of treatment for all staff who engage in consultancy in a manner that reflects appropriate professional standards.

EI Ltd 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. It provides negotiating and contractual services to the University and its staff to support and enable consultancy work. Consultancy contracts are between *EI Ltd* and the client. The University and *EI Ltd* have entered into separate contractual arrangements in terms of which *EI Ltd* has been vested with the appropriate powers and resources to enable *EI Ltd* to enter into the consultancy contracts.

EI Ltd also leads on behalf of the University in the negotiation and contract stipulation for all industry engagement, including provision of services and contract research.

5. Aims of the Procedures for Consultancies

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 consultancy 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 for Consultancy

For consultancies, approval must be obtained in advance from their Head of School, Head of College, Head of Professional Services 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 (beyond email, core IT programmes, access to the library and to *EI Ltd*)
- d. The consultancy fee to be charged (plus expenses)
- e. pre-agreement, in line with HM Revenue & Customs ("HMRC") rules, of the distribution of monies.

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 Ltd* by contacting the relevant Consultancy Manager.

i Signature

All Consultancy contracts should be signed only by someone who has formally received delegated authority to sign contracts of this nature from the Chief Executive of *EI Ltd*.

ii Consequences of non-compliance

These procedures are in place to protect both the University and its staff. Non-compliance may constitute a disciplinary offence. If this policy is not followed any tax arising will be charged to the department of the responsible party.

7. Duration and extent of Consultancy

Where approval is given to undertake consultancy work under the provisions of this document a member of staff should not spend more than an average of one day per week during a teaching semester, on consultancy activities. The total should not exceed sixty days in a full academic year. In the unusual event of an individual wishing to develop his or her consultancy activities beyond this point, movement to reduced hours (and salary) is an option that can be considered.

It is the responsibility of the Head of School, (or Head of College/Professional Services 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

EI Ltd produces guidelines annually on suggested fee rates that may be earned by University staff for consultancy work. (<https://www.edweb.ed.ac.uk/edinburgh-innovations/consultancy-business-services/fees-payments/fee-rates>)

EI Ltd 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 by *EI Ltd* at the earliest possible opportunity and before any final terms are agreed. Early involvement of *EI Ltd* is recommended to help 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 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
 - Travel and subsistence
 - Any other identifiable direct costs, e.g. secretarial services, IT/Library costs
 - *EI Ltd's* 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 Ltd* and dealt with before any price is discussed with the client (see also paragraph 11, Payment Arrangements).

9. The Consultancy contract

Consultancy contracts 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 Ltd* maintains and regularly updates these contracts and can provide draft documents upon request. In every case where a client's contract is used, *EI Ltd's* legal advisers must first have agreed its terms before they are presented for signature.

10. Division of income

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%
EI Ltd:	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 Professional Services 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 Ltd* issues the consultancy invoice to the client.

HMRC rules also mandate that no fees can be paid by the University to a consultant's private company.

11. Payment Arrangements

The University has authorised *EI Ltd* to issue invoices in respect of consultancy and other services rendered. *EI Ltd* 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 The University of Edinburgh staff will normally be made through the University's Payroll Office, who will make appropriate deductions before including the net amount payable in the appropriate 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. Private Consultancy

The University discourages employees from private consultancy as this exposes the University, and the member of staff, to unwarranted risks without indemnification. 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 still be exposed to the attempted pursuit of claims in delict (whether or not by vicarious liability). As an institution that 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 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 Ltd* legal team in respect of the contractual terms of a private consultancy.

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

13. 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 Ltd* for advice and assistance.

14. Approval and review

This policy was approved by CJCNC on 16 August 2019 and takes effect from 30th August 2019. This version replaces all previous issues of this policy. This policy will be reviewed by December 2021.