

CONSULTANCY PROCEDURE

1. INTRODUCTION

The University recognises the benefits that consultancy can bring to both the institution and the individual member of staff through links with industry, commerce, Government bodies and areas of professional service. These benefits lie in the opportunities for knowledge transfer, practical application of academic expertise and experience.

2. PURPOSE

The purpose of this procedure is to create a framework for the management of consultancy activities and service work carried out by University staff. This procedure seeks to ensure these benefits while protecting the interests of both the University and its staff.

3. AIMS

This procedure is intended to address the following aims and concerns:

- **Legal and financial risk** – Consultancy work can expose the individual and the University to legal and financial risk, especially in relation to potential claims for damages on the grounds of professional negligence. The implications of any contractual obligations and insurance provisions for the University and the individual must be fully considered so that this risk is minimised.
- **Conflicts of interest** – University staff must always act in accordance with the University's Conflict of Interest procedure. There is an obligation on members of staff to declare any potential conflicts of interest and seek advice from Enterprise Services.
- **Relationship between consultancy activities and University duties** – While acknowledging the benefits derived from consultancy, a balance must be struck and maintained to ensure that these are not gained at the expense of University duties.

4. DEFINITIONS

Consultancy - The provision of any advice, information, "in-company" training, acting as a 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, writing an article for a newspaper;
- c. External examining duties for other institutions or professional bodies;
- d. Acting in an advisory role for a publishing house, Research Council, Funding Council, charity (or their committees) or professional body associated with the individual's role.

Consultancy may be further split into the following three different types:

1. External consultancy

Consultancy services provided by a member of staff to a third party in the course of his or her employment by the University. The nature of the consultancy arises naturally from and is related to the individual's employment. University resources are used when carrying out the consultancy and legal liability lies in whole or in part with the University.

2. Private consultancy

Consultancy services are provided by a member of staff to a third party and are not in the course of his or her employment by the University. The nature of the consultancy does not arise naturally from and is not related to the individual's employment. University resources are not used for the performance of the consultancy and legal liability lies with the individual. Subject to section G below, the procedures detailed in sections A to F below shall not normally apply to such Private consultancy work.

3. Service work

The provision of analytical, testing or other services for third parties in the course of his or her employment by the University, involving any use of University facilities, equipment, IT networks, and staff resources. For the purposes of this procedure, all such work should be regarded as similar to external consultancy and be regulated as such.

5. PROCEDURE

A. Approval and Signature

Approval

Approval must be obtained in advance from the member of staff's Dean of School, Head of Enterprise Services or the Associate Vice Principal (Research and Enterprise) as appropriate, or the person formally delegated by them to deal with such matters.

The approval should include written agreement to the following:

- a. The nature of the proposed consultancy;
- b. The proposed timetable for the consultancy;
- c. Details of any University resources or facilities involved;
- d. The level of cost to the University and distribution of monies received.

In seeking approval, the individual must also disclose any outside activity, relationship or interest, which might give rise to a conflict of interest. If a member of staff is unsure whether a conflict of interest exists, they should seek advice from the Head of Enterprise Services.

Signature

All Consultancy and Service contracts governed by these procedures must be signed by the Head of Enterprise Services or his/her delegated nominee.

B. Duration and Extent

Where approval is given to undertake consultancy or service work, a member of staff should not spend more than one day per week during semester, and two days per week at other times, on external or internal consultancy activity. The total should not exceed sixty days in a full academic year.

It is the responsibility of the Dean of School, Head of the Professional Services Group or the as Vice Principal (Academic) appropriate to ensure that the proposed consultancy does not conflict, in nature or extent, with the University duties of the member of staff concerned.

C. Fees Rates and Pricing

Enterprise Services produce guidelines on suggested fee rates that may be earned by University staff for consultancy work.

Enterprise Services 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 must be reviewed with Enterprise Services at the earliest possible opportunity and before any final terms are agreed. Early involvement of Enterprise Services is required, 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 Full Economic Costing (FEC) and a fair return to the member of staff, the School and the University. 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
 - VAT where applicable

Any National Insurance and income tax implications for the member of staff or the University should be discussed with Enterprise Services and addressed before any discussions take place about price with the client.

D. The Consultancy Contract and Contracts for Services

Contracts will usually be prepared using the University's standard contract terms. Enterprise Services maintain and regularly update these contracts and can provide draft documents upon request. In every case where a client's contract is used, the University Solicitor must first have agreed its terms before they are presented for signature. Wherever possible, the University's standard contracts should be used.

E. Division of Surplus

After the deduction of any direct costs and expenses based on Full Economic Costing (including, but not limited to the member of staff's daily rate of University pay and travel expenses), the standard division of the surplus is as follows: -

Individual member of staff/consultant's research account	50%
School	30%
University	20%

The division of fee income between the staff member and the School may be varied by local agreement among the Consultant(s) and their Dean of School, Head of Professional Service Group or the Vice Principal (Academic) as appropriate.

F. Payment Arrangements

The University has authorised the Finance Office to issue invoices in respect of consultancy and other services rendered. Finance will issue such invoices and will also be responsible for arranging for payments to be made to Consultants' research accounts, the Schools and the University.

Payments due to members of University Staff's research accounts will normally be made through the University's Finance Office, who will make appropriate deductions before including the net amount payable. Payments to research accounts will not be released before monies in respect of the consultancy invoice have been received from the client by UWS.

G. Private Consultancy

Private consultancies are the responsibility of those staff who enter into them and no cover will be provided by the University's Professional Indemnity Insurance provisions. However, unless certain steps are taken, the University could still be exposed to potential legal claims (including delict). 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, out of University's normal working hours, out of University premises, without using any of University facilities and resources (including IT, Estates, offices, Laboratory, Library, etc.) and without any approval or authorisation from the University. If a member of staff chooses to undertake a private consultancy, he/she 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 the West of Scotland. Accordingly, you and your company, by accepting the services, (i) acknowledge that the University of the West of Scotland 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 the West of Scotland 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 the West of Scotland 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 uws.ac.uk) or University web page (i.e. one containing the domain uws.ac.uk) in promoting or undertaking the private consultancy.
5. Not seek legal advice from the University's Legal Services team in respect of the contractual terms of a private consultancy, or from any other professional services office of the University
6. Not use any University facilities, resources or working hours. Any member of staff found to be using University facilities or resources for private consultancy work or conducting private consultancy work during their University working hours shall be in breach of their contract of employment.
7. Any 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.

H. Further Advice

Any staff member proposing to engage in consultancy activity and who is in doubt about the application of this procedure should contact Enterprise Services for advice and assistance.

Procedure Author – Head of Enterprise Services	Procedure Owner – VP and PVC (Academic)
Parent Policy Statement - Research and Enterprise	Public Access or Staff Only Access - Public
Version 1 – 9 th May 2018	Changes and Reason for Changes – New Procedure