

Finance & Resources Committee

21/06/2016

Agenda Item 14

Consultancy Policy & Procedure

January 2016

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1. Introduction

The University of St Mark & St John encourages staff to undertake certain kinds of work, including a range of professional activities and some types of consultancy. It considers that these activities can enhance the standing and reputation of the University and also enables it to respond to the needs of the region in line with Government wishes. It also acknowledges the value of knowledge exchange in the support of staff development.

The development of a rich research and knowledge exchange activity within the University is in line with both the University's Strategic Plan and the Research Strategy and is the subject of institutional KPIs.

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.

Staff should refer to Appendix A of their contracts of employment for further details on intellectual property rights.

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.

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

i. University consultancy

In which a member of staff provides a consultancy service to a third party, or provides a consultancy service 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. A University 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 University consultancy other than in the case of a legal citation.

ii. 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 any conflict of interest has been disclosed appropriately and either eliminated or properly managed. In addition, the private consultancy work must not be undertaken in the University's name, nor should there be any reference to the University's name throughout the course of the consultancy including any reports written or verbal.

Service work

Service work is 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 this

procedure all such work should be regarded as similar to University 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 University consultancies must be negotiated through the Research and Innovation Office (RIO), or through some other agency so authorised by the Pro Vice-Chancellor of Research, Innovation & International or their nominee.

RIO 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 University of St Mark and St John and the client and may be signed on behalf of the University only by the Pro Vice-Chancellor of Research, Innovation & International or their nominee.

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.

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.

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 for University Consultancies

i. Approval

For all University consultancies, approval must be obtained in advance from their Dean of Faculty and in accordance with the applicant's contract of employment.

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 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 RIO.

Faculty approval precedes contractual signature (see below).

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 the Pro Vice-Chancellor of Research, Innovation & International or their nominee.

7. Duration and Extent

Where approval is given to undertake consultancy work under the provisions of this document a member of staff should not usually spend more than an average of one half day per week in consultancy activity. The total should not exceed twenty five days in a full academic year, but the days may be used in bloc subject to the University's Annual Leave Policy and Procedure.

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 Dean of Faculty 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 Dean of Faculty is to be obtained in relation to each consultancy.

8. Fee Rates and Pricing

RIO produces guidelines annually on suggested fee rates that may be earned by University staff for consultancy work. (These are available on RIO Intranet Pages). Likely pricing is as follows:

Professor or Senior Manager

Spine Point: 50 or above

Public/Third Sector Rate: £671.66 to £900 plus

Private Sector Rate: £852.49 to £900 plus

Associate Professor or Head of Department

Spine Point: 44 - 49

Public/Third Sector Rate: £619.54 to £662.31

Private Sector Rate: £786.34 to £840.63

Senior Lecturer

Spine Point: 35 - 43

Public/Third Sector Rate: £556.81 to £611.72

Private Sector Rate: £706.72 to £776.42

Lecturer

Spine Point: 30 - 34

Public/Third Sector Rate: £528.54 to £550.82

Private Sector Rate: £670.84 to £699.12

RIO 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 RIO at the earliest possible opportunity and before any final terms are agreed. Early involvement of RIO 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 Faculty 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. administrative 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 RIO and dealt with before any price is discussed with the client (see also section 11, Payment Arrangements).

In respect of University 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 and Contracts for Services

Consultancy contracts for University 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. RIO maintains and regularly updates these contracts and can provide draft

documents upon request. In every case where a client's contract is used, RIO 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

After the deduction of any direct costs the standard division of fee income would normally be as follows:

25% University

25% Faculty

50% Individual

Under exceptional circumstances the relative proportional split of income might be negotiable. The

negotiation will occur within the Research and Innovation Office and under the authority of the Pro-Vice Chancellor Research Postgraduate and Innovation.

11. Payment Arrangements (University Consultancy)

The University has authorised RIO to requisition invoices in respect of consultancy and other services rendered. RIO will issue such invoices and will also be responsible for arranging for payments to be made to consultants and to the Faculty. Payments due to members of University staff will be made through the Payroll Department 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 RIO. All payments will be non-pensionable.

12. 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 **requires approval or authorisation from the University**. If a member of staff chooses to undertake a private consultancy, the member of staff must:

1. Obtain full approval from their Dean of Faculty (in line with their contract of employment exclusivity of service clause)
2. Use only their home address for all contractual and other correspondence relating to the private consultancy.
3. 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 St Mark & St John. Accordingly, you and your company, by accepting the services, (i) acknowledge that the University of St Mark & St John 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 St Mark & St John 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.

4. Not use University headed paper or a University address in any contractual and other correspondence relating to the private consultancy.
5. Not use a University email account (i.e. one containing the domain marjon.ac.uk) or University web page (i.e. one containing the domain marjon.ac.uk) in promoting or undertaking the private consultancy.
6. Not seek legal advice from the University's solicitors 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 regarding a breach of contract, or raising a legal action to recover any financial loss incurred.

13. General

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