

Engagement of Consultants Policy

1. Introduction

This policy is designed to confirm the circumstances in which Open University (OU) work may be undertaken by consultants. The policy also sets out the responsibilities of managers and staff when appointing or working as consultants at the OU. For further guidance, see the Engagement of Consultants Procedure.

2. Scope

All OU staff and consultants are subject to this policy.

3. Procurement and payment of consultants

Where Units wish to engage a consultant, who provides services through a limited company or partnership (sometimes called an “intermediary” or Personal Services Company (PSC), either directly or via an agency, Units are responsible for assessing whether the consultant falls within the IR35 rules. Units must complete the HMRC online ESS tool to determine this before an engagement is made.

Where the consultant is engaged via an agency, Units must make the assessment when the role is defined and inform the agency of the outcome of the assessment in advance of agreeing the contract. The agency will be responsible for operating PAYE as appropriate and will pass on National Insurance costs, Apprenticeship Levy and administrative costs to the Unit.

Consultants that fall under the HMRC IR35 rules are not deemed as an employee or a worker under employment law and do not have any statutory rights nor are they subject to a Right to Work check.

The appointment of consultants

Consultants are not OU employees and have no employment relationship with the OU.

- Consultants allow flexibility as they can be taken on for short term project work.
- Consultants are appropriate for project work where there is a specific piece of work which needs to be done and can be carried out discreetly and distinctly from normal day to day employment. For example, reviewing the functionality and effectiveness of a website.

- The amount of control the University has over the consultant's day to day activities is limited. A consultant should work more independently than an employee i.e. when given a task to do they should be given relative freedom to determine how to achieve it.
- Access to employee procedures. A consultant is not subject to any People Services policies or procedures, for example they cannot be appraised or disciplined and they do not have access to the grievance procedure.
- Minimal integration within the team. Consultants may not be given management or supervisory roles; they should not be trained or participate in employee briefings or team building events.
- They should not be given company credit cards and are not eligible to receive advances against anticipated expenses.
- The contract between the University and the consultant must clearly state that the relationship is one of a consultant. The consultant can be required to sign a confidentiality agreement without increasing the risk of the consultant becoming an employee.
- The consultant should be paid for completion of specific tasks or for the amount of hours spent. They may not be paid holiday pay, sick pay or maternity pay.

Consultants **should not** be appointed where the criteria listed below apply:

- Where the individual's working time is under the control of the University, rather than at their own disposal.
- Where there is a mutuality of obligation i.e. where the University has an obligation to provide work, and the individual has an obligation to carry out the work.
- If the place, time and method for doing the work are specified by the University.
- Where the financial risk is borne by the University and the individual does not provide their own equipment and tools.
- Where the individual performs all or the majority of their contracted duties on University premises.

In the above circumstances it may be more appropriate to appoint to a fixed term contract. Any variation to this rule is subject to the written agreement of the Deputy Group People Director.

4. Responsibility of managers

Authorisation of consultancy contracts

- a) The Head of Unit (or nominee) is responsible for authorising all consultancy contracts in their unit, if under 12 weeks. If over 12 weeks the authorisation must be from the relevant People Business Partner and PRO.
- b) A consultancy contract must be properly authorised before the consultant commences the provision of services to the OU under the terms of that contract.

5. Responsibility of employees

5.1 Consultancy contracts for ex-employees

Staff who have received a voluntary redundancy/severance payment on leaving the University are not normally eligible for future engagement under a consultancy contract. Staff of any category, leaving the University for other reasons, may be engaged as an external consultant if they have the requisite skills and experience.

5.2 Personal relationships and conflicts of interest

To avoid allegations of impropriety staff involved in arranging consultancies must declare any potential conflict of interest in relation to issuing a consultancy contract, in writing to their Head of Unit.

5.3 Retired staff

Ex-staff who have taken enhanced early retirement are not permitted to undertake consultancy services at the OU without the express prior approval of the Early Retirement Panel or Deputy Group People Director.

5.4 Open University employees and consultancy contracts

Full time academic staff are only permitted to undertake OU based consultancy within a unit other than their own. They may only undertake consultancy work which is fundamentally outside the duties which would normally be undertaken by someone at their grade.

OU academic staff may not undertake consultancy work or work associated with the preparation, teaching or assessment of study material offered or to be offered as part of the University's undergraduate, higher degree, continuing education or other programmes (the definition of study material includes packs as well as modules).

In addition to this, full-time, OU academic staff may not enter into separate consultancy agreements with the OU, for the duties listed below, as they are

expected to undertake these duties under the terms of their employment contracts.

- Drafting study units or other OU modules
- Reading and commenting on modules and other OU study material
- Developmentally testing OU study material
- Advising on OU module plans or study materials
- Undertaking feasibility or other studies for OU modules or study materials
- Work related to module presentation
- Adaptation of OU study materials for external bodies, including OU Worldwide Ltd, including writing assessment material
- Any research or project work internal to the OU which would normally be covered by study leave
- Moderating and monitoring duties.

Full-time OU Academic staff **may** enter into separate consultancy agreements for the following work (where this falls outside their substantive OU contract of employment).

- Feasibility studies for external bodies
- Materials preparation for external unit's bodies
- Consultancy advice/reports for external bodies
- Research and/or development contracts for external bodies
- Teaching for external bodies.

Part-time academic staff may undertake the above duties where the consultancy work, together with their normal duties, does not exceed the equivalent of a full-time role. Where the work is significant or on-going, a variation to contract or to hours must be used rather than a consultancy contract.

5.5 Time allowance (Academic Staff)

- Although academic duties are full time, members of academic staff are permitted to undertake extra-curricular activities, including consultancy work appropriate to their status. This is subject to the proviso that

these activities do not adversely affect the proper prosecution of their university duties.

- Central and Regional Academic staff will generally be permitted to devote 10% of their normal working time to such external activities (including consultancy work) **that is no more than 22 days per year**.
- Academic Staff are also permitted to use annual leave to perform consultancy work for which the OU has been contracted by an outside body (subject to the requirements of the European Working Time Directive to take a minimum of 28 days annual leave, including Bank Holidays).
- Study leave may not be used to undertake consultancy work (as this would result in double payment for the same contracted time).
- Formal written notification of consultancy commitments will be required and a record must be kept by the Head of Unit. This consultancy work must also be included in workload planning discussions. The prior approval of the Deputy Group People Director (on behalf of the Vice Chancellor) will be required if the consultancy work may give rise to significant or unusual commitments, including commitments in excess of the permitted 10% of normal working time (for further information on extra curricular activities, please consult the terms and conditions of employment).

5.6 Consultancy work and Academic-Related, Research, and Support Staff

- Consultancy contracts for Academic-Related, Research, and Support Staff will be permitted only in exceptional circumstances. The proposed consultancy services must not form part of their normal duties and must be fundamentally different from the duties that would be expected from someone in that category of staff under the terms of their contract of employment.
- Staff on terms and conditions that permit overtime payments may only undertake consultancy work with the prior written approval of the Deputy Group People Director.
- A description of the consultancy services must be drawn up with sufficient detail to allow these services to be monitored.
- Consultancy contracts for services will not normally be allowed for work within the employee's substantive unit. Any requests for the rule to be varied must be made with a written supporting case to the University Secretary; via the Deputy Group People Director.
- Work must be undertaken in the individual's own time. The member of staff should not be permitted to undertake more than 22 days per

annum or use more than 10 days of the 33 days annual leave entitlement for this purpose.

- Staff are not permitted to use OU approved study time to undertake consultancy, members of staff are already paid for study leave and therefore it is inappropriate to pay the staff member again for that time.
- Rates of pay should relate to the work being undertaken and not the individual's current salary. People Services will approve proposed rates on behalf of the University Secretary.
- If the Head of Unit/Sub Unit or any other senior staff member (i.e. grade 10 or equivalent) is requested to undertake consultancy work, the consultancy contract will require the approval of the University Secretary. Written justification for the work and the proposed fee should be submitted to the University Secretary, via the Deputy Group People Director.
- All consultancy contracts should identify the person responsible for monitoring the work being undertaken and also the person responsible for confirming the satisfactory completion of the work.
- An OU employee may not draft or authorise a consultancy contract for him/herself. In such circumstances, a more senior member of staff must be involved in the drafting, approval and monitoring or performance of the consultancy contract.
- Conditions surrounding level of payment as outlined in the Raising Consultancy Contract procedure apply.

5.7 Staff involvement in servicing companies

When the University is considering purchasing goods or services from a company owned or run by a member of staff (or a person with whom a staff member has a personal relationship) the following rules apply:

- a) The member of staff should disclose an interest, and approval for each consultancy contract must be sought from the University Secretary, via the Deputy Group People Director.
- b) Such work should be offered in accordance with University financial regulations and purchasing procedures for VAT registered companies or under approved procedures for the award of a consultancy contract where appropriate.

Close relatives of staff and those with whom there is a personal relationship are treated as staff for these purposes.

6. Equality, diversity and inclusion

Policies are inclusive of all Open University staff, regardless of age, care experience, caring status or dependency, civil status, disability, family status, gender, gender expression, gender identity, gender reassignment, marital status, marriage and civil partnership, membership of the Traveller community, political opinion, pregnancy and maternity, race, religion or belief, sex, sexual orientation, socio-economic background or trades union membership status.

7. Useful references

Engagement of Consultants Procedure

Authorisation to Hire (Consultancy)

Consultancy Appointment Form for OU Staff

Consultancy Rates

Additional Duties Contract Rates

[Information Leaflet for Consultants](#) (available on the Finance and Business Services Intranet)