

CONSULTANCY POLICY

Approved by Council 30 June 2011 (minor revisions 19 June 2012)

Equality and Diversity

This Policy will be applied in a non-discriminatory way, irrespective of an employee's age, disability, gender, gender identity, gender reassignment, race, religion or belief or sexual orientation.

Accessibility

If you require any document in an alternative format, for example, in larger print, please contact Research Office.

1 Introduction

This policy applies to both academic and support staff engaged in consultancy and/or commissioned work.

The College values the undertaking of consultancy and commissioned work by its staff: these forms of activity enhance its external profile by developing our engagement with the community, extending the societal impact of college expertise, and creating mutually beneficial opportunities for collaborative research and other consultancy services. They may also enrich the learning experience offered to students by providing examples of real-life applications of academic expertise and/or opening up the possibility of placements or internships for our students.

Other related benefits to consultancy (a term which henceforth includes the production of commissioned works) include:-

- Its capacity to contribute across all sectors to the development of policies, practices, economic activity, cultural experience, and quality of life
- the opportunity it provides staff to develop and maintain professional expertise, and to enhance the social and commercial relevance of their research, teaching, or professional activity;
- generation of income for the College, its departments, and individual staff who contribute to such activity over and above their normal duties;

It is therefore the College's policy to encourage staff to engage in consultancy wherever appropriate and in a manner which is consistent with their contractual responsibilities.

2 Definitions and Scope of the Policy

For the purposes of this policy the College defines consultancy as professional work undertaken by staff in their field of expertise, for which the client makes payment; it normally produces some form of contracted output.

- **College Consultancy** is carried out by members of staff in their capacity as College employees. The work carried out may be either part of, or additional to, their normal duties, and payments additional to their normal salary may be made to them depending on the nature of their involvement, the extent and form of any impact on their normal duties, and departmental arrangements.
- **Private Consultancy** is carried out by members of staff entirely independently of the College, which takes no responsibility for any aspect of the delivery or quality of the work. Financial arrangements are not channelled through or monitored by the College. The College does not seek to limit or control such work as long as it does not impinge adversely on the staff member's effective and full performance of their contractual duties. This means that staff must ensure and be ready to verify that there are no conflicts of interest between their consultancy work and their role and work in the College (see the Conflicts of Interest Policy on the College Policies website) , and that the time spent on their private consultancy work is not so substantial as to detract from their performance of their contractual duties in the college. Particular regard should be paid to the provisions of the Working Time Directive and to the Health and Safety implications of excessively long working hours

If any College resources (space, equipment, materials) are used, this must be with the agreement of the staff member's Head of Department and costs must be reimbursed at the appropriate rate. Finally, it must be made clear to their client(s) that the work is private and that the College bears no liability for it.

Consultancy for companies owned and part-owned by the College or in which a member of staff may have an interest is included within the scope of this document. Staff should ensure that they comply with the College's Conflicts of Interest Policy when undertaking any work for such companies.

Staff should consult the Ordinance on Outside Work and Consultancy (<http://www.gold.ac.uk/governance/ordinances/current/external-consultancy/>) and/or seek advice from their Head of Department if they are unclear about whether their proposed work constitutes College consultancy. The Business Development Office [BDO] will provide advice where necessary to Heads of Department.

3. Disclosure of Consultancy

The College requires that all consultancy undertaken by its full-time employees, whether college-based or private, is disclosed; and, where it is a College consultancy, that it is formally approved according to the protocols set out in paragraphs 4.3 to 4.6. This is for the following specific reasons:

- **Conflicts of Interest:** The College must be satisfied that the individual will continue to perform all the duties required of them by their contract of employment with the College and that the consultancy does not conflict with the interests of the College.
- **Non-competition:** The College must be satisfied that staff are not undertaking consultancy in competition with the College, either directly or indirectly. Staff must be clear that their primary duty is to Goldsmiths, and must not therefore act in any way that conflicts with the best interests of Goldsmiths. If members of staff

are in any doubt about any consultancy opportunities they must seek advice from the College before progressing discussions.

- **Consistency with College values and ethical issues:** The College must not be directly or indirectly associated with activities which are likely to be perceived internally or externally as unethical or inappropriate.
- **Intellectual Property:** Work for external bodies should be consistent with the terms and conditions of the College's General Regulation on Intellectual Property.
- **Information Access:** Work for, and collaboration with, external bodies on behalf of the College is held by the College for the purposes of the Freedom of Information Act (2000) and information generated under the contract (including the terms of the contract itself) will be subject to disclosure unless a relevant Exemption within the Act applies. This should be specified in the contract (model terms are held by the Finance Department).
- **Quality Assurance:** The College requires that appropriate arrangements are in place to assure the quality of College consultancies, and to ensure that its contractual obligations to third parties can be met in the event of a member of staff originally undertaking the work being unable to complete the work for whatever reason.

Failure to disclose or obtain formal approval for consultancy as required by this policy shall be regarded as a disciplinary matter, and is subject to the College's disciplinary procedures. In addition, members of staff will not be indemnified or insured by the College in circumstances where formal approval for consultancy has not been obtained.

4. Principles Governing College Consultancy

- 4.1. The College recognises that its capacity to provide consultancy services relies on effective administrative procedures which enable appropriate and clear contractual arrangements to be put in place rapidly. It is intended that much of the organisation and administration will be carried out within the departments in which the consulting staff are based, with training and support relating to financial, contractual, staffing and legal matters provided by Finance, Human Resources, and the BDO.
- 4.2. It is not expected that all staff should be involved in College consultancy; the College recognises that staff will be involved to differing extents in consultancy, research, professional practice, course development, teaching and academic management, and other activities as required by each individual Department. Individual staff may decline to undertake a particular consultancy if it conflicts with a reasonable and recognised personal, moral or ethical belief.
- 4.3. The responsibility and authority for prioritising and negotiating/authorising appropriate consultancy arrangements lies in the first instance with the Head(s) of the Department(s) from which a potential consultancy activity is to be provided. Individual staff members must therefore put any proposal for a College consultancy to their Heads of Department at an early stage. Heads of Department have the requisite knowledge and understanding of departmental resources, expertise, and strategic and operational objectives to evaluate the impact and potential benefits of a potential consultancy. It is likewise their responsibility to put

in place appropriate mechanisms for assuring the effective delivery of contracted work.

- 4.4. Nevertheless, the College holds the ultimate responsibility for the appropriateness and quality of consultancy undertaken in its name, and for ensuring that there is a reasonable degree of consistency in the way that principles are applied. When a Head of Department has approved a consultancy at departmental level, s/he must submit the proposal, indicating the key terms and conditions and details of internal financial arrangements, to a designated member of the Senior Management Team (normally the Pro-Warden Research & Enterprise) for final approval prior to the signing of any contract. The member of SMT will consult with colleagues as necessary in the light of any College commitments which may arise through the consultancy.
- 4.5. Approval may be denied by the Head of Department or by the designated member of the Senior Management Team for a range of reasons, including financial non-viability, staff workload, health and safety issues, or lack of appropriate expertise. Consultancy must not involve activities that have the potential to bring the College into disrepute or that conflict with the interests of the College or Department, or breaches any other College policy such as those relating to health and safety provisions.
- 4.6. The College does not prescribe a maximum limit on the amount of time spent by employees on either College or private consultancy (as defined in section 2) providing that it does not compromise the discharge of the employee's contractual responsibilities to the College. As noted above however, staff need to be conscious of the Working Time Directive and of health and safety issues. It may be in some cases that it is necessary for some members of staff to sign derogation from the working Time Directive where it is reasonably predictable that it is not possible to complete the work within the general provisions of the Working Time Directive.
- 4.7. The College's name may not be used without approval. Requests by clients to use the College's name in relation to any output or outcomes from a consultancy must be referred to a designated member of the Senior Management Team (normally the Pro-Warden (Research and Enterprise)). It is unlikely that any such request will be declined, but prior agreement is required.
- 4.8. The College will monitor the effective operation of this policy through the BDO and the Finance Department, and updates may be approved by Council from time to time.

5. Consultancy and Secondments

- 5.1. Staff members need to be aware of their responsibilities to each party when consultancy is agreed. In cases where members of staff are acting as College consultants, they are operating on behalf of Goldsmiths. Their primary duty and responsibility is to work in the best interests of Goldsmiths, under Goldsmiths' management or under the direction of a Goldsmiths' nominee.
- 5.2. Staff members who are seconded to another organisation under a College consultancy contract become temporary employees of the organisation to which

they have been seconded. Their responsibility is to work in the best interests of the organisation to which they have been seconded. Where this creates conflicts, resolution will be in accordance with procedures determined in the consultancy contract. Where the staff member becomes concerned regarding a conflict of interest or is aware that the consultancy is working in conflict with the interest of Goldsmiths, they should raise the matter through appropriate procedures and management lines defined in the consultancy agreement.

- 5.3. Staff responsible for setting up a private consultancy or secondment (whether for themselves for another person) should ensure that there is a clear written understanding with the other party to the contract as to who holds the information generated under the contract for the purposes of the Freedom of Information Act (whether the other party is itself subject to the provisions of the Act or not).

6. Indemnity, contracting, and pricing for College Consultancy

- 6.1. All College consultancies must have a legal contractual basis and contracts must be signed by the relevant authority. *Inter alia*, the contract must refer to financial arrangements, the time scale, deliverables and to ownership of output including the intellectual property.
- 6.2. Contracts should be negotiated in accordance with the costing and pricing procedures agreed by Finance. The Head of Department is required to confirm, in recommending a proposed consultancy to the designated member of SMT, that the charges made to clients cover at minimum all of the foreseeable direct and indirect costs of undertaking the work, and that the department accepts financial responsibility for any potential loss.
- 6.3. The College seeks to maintain standard consultancy contract terms and conditions for reasons of good governance, simplicity and efficiency; templates are available via the BDO web pages. Where possible, consultancy should be undertaken under these terms and conditions. However, it is recognised that contract terms and conditions may need to be varied from time to time.
- 6.4. Any contract documents should use the legal name of the College as specified in the Charter, "Goldsmiths' College", and financial transactions are also required to use that name. ("Goldsmiths' College (also known as Goldsmiths, University of London)" is a useful formula for avoiding confusion in some contexts.) Details of the Charter and Statutes and of the College's legal form (required by some contractors) are available on the College's Governance website.
- 6.5. The College provides professional indemnity insurance to staff members undertaking approved College consultancy under a formal contract between the College and the external body. The College disclaims all liability for negligence, malpractice or lack of exercise of due care in every case in which work is undertaken without its prior approval and the relevant activities are not specified in the contract. Goldsmiths will not take responsibility for any action against a consultant in relation to work that they agreed to undertake privately or without College approval.

7. College consultancies: Income distribution and payments to staff

- 7.1. The department in which the consultancy is principally based, and which takes overall responsibility for the delivery of the contract, will receive the majority of the income from it. For the initial two years of the present policy, 90% of the total income will be returned to the department with 10% retained centrally in order to contribute to the costs of central support (e.g. from Finance, the BDO, etc.). The appropriateness of this distribution will be reviewed periodically thereafter, and it may be subject to change.
- 7.2. The department will be responsible for absorbing all the costs of the consultancy and for making any associated payments for staff time, equipment, and use of facilities. As noted in para 6.2, it will also be liable for any loss.
- 7.3. Before a consultancy is agreed in principle and recommended to the designated member of SMT, the Head(s) of the department(s) whose staff are undertaking the work will agree with the member(s) of staff involved:
 - the extent to which their consultancy-related work will be undertaken as part of, or in addition to, their normal duties and workload
 - any costs to the department of (a) releasing staff from their normal duties in order to undertake the consultancy (e.g. teaching buy-out) and (b) increased pressure on other resources (e.g. additional technician or clerical time)
 - any additional workload taken on by departmental colleagues in order to facilitate the consultancy

They must then agree:

- the amount of income to be used to cover these direct costs
 - mutually acceptable levels of payment to the members of staff whose total workloads are directly or indirectly increased by the consultancy or whose particular skills/expertise/ reputation add significant financial value to the contract
- 7.4. The level of payments to staff may vary from 0% to 100% of the residual income to the department after payment of all costs, and will depend on a range of factors including time investment by the staff member, departmental policy, indirect benefits to the department of enabling the consultancy, and any special circumstances. Under no circumstances may the total payments made to staff exceed the residual income retained by the department after payment of all the other costs of the consultancy including indirect costs.
 - 7.5. Payments to staff may take the form of supplements to personal salary and/or of credits to a discretionary research account which can be used to support their own research activities. Payments taken additional to a normal salary will be subject to tax and national insurance deductions and where appropriate pension contributions.
 - 7.6. The basis for the proposed payments to staff will be clearly articulated in the Head of Department's recommendation to the designated member of the Senior Management Team in order that s/he can approve the arrangement and seek clarification or amendments if necessary.

7.7. The following additional conditions apply:

- Normally no payment will be made to an individual where it would result in a deficit on the contract;
- No payment will be made to individuals where the terms and conditions of contract prohibit it;
- No payment will be made to individuals in advance of the client paying the invoice;
- Any time input required to rectify unsatisfactory work will not normally be cause for additional payments unless there is additional income to cover further costs.

7.8. Heads of Department will be expected to incorporate actual and projected consultancy income into their strategic and financial planning documentation including their budget as required.

8. Private Consultancy

8.1. All staff are permitted to carry out and retain the income from private consultancy subject to the previously noted provisos that they disclose the consultancy (cf Section 3) and that it does not impinge adversely on the effective discharge of their contractual responsibilities to the College (cf para 4.6). No adjustment may be made to the individual's College overall workload in recognition of their private consultancy. However, the College is open to discussions on flexible working options which might accommodate staff members undertaking private consultancy.

8.2. The individual and any work s/he undertakes on a private consultancy basis will not be covered by professional indemnity insurance or any other insurance provided by the College.

8.3. Staff are therefore personally responsible for the consequences of their private consultancy, and for ensuring that clients are fully aware that the College is in no way responsible for or liable in respect of private consultancy undertaken by its staff. Staff should be aware that, despite the disclaimer in para 6.4, claims by clients for damages related to under-performance or breach of contract may be directed at the College rather than the individual member of staff. This might arise as clients naturally infer professional competence in a discipline from the fact of a College appointment. For this reason, it is required that staff make it explicit to private clients, via the form provided as Appendix A, that the College cannot be held liable for any claims for damages resulting from negligence, lack of performance or breach of contract.

8.4. Following from paragraph 6.5, members of staff who are undertaking private consultancy or unauthorised consultancy need to be clear, and to make it clear to their clients, that it is their own responsibility to provide independent evidence of their competence to do the work they have agreed to undertake, and that the client may not rely solely on their employment and standing in Goldsmiths. Such staff also need to convey to clients that they should undertake due diligence in assuring themselves of the consultant's competence, and that they may not rely on Goldsmiths' relationship with the consultant as proof of competence to

undertake work for which the consultant is engaged.

- 8.5. Goldsmiths will not take responsibility for any action against a consultant in relation to work undertaken in a private or unapproved capacity, and staff undertaking private consultancy are required to indemnify the College against any costs, claims, damages or expenses incurred by the College as a consequence of the consultant's private work.
- 8.6. Private consultancy must not involve activities that have the potential to bring the College into disrepute or that conflict with the interests of the College or any of its subsidiaries. In such circumstances, an authorised officer of the College (eg the staff member's Head of Department), will draw to the staff member's attention the incompatibility of their consultancy with their contractual obligations to the College and will seek immediate resolution of the conflict of interest. The College reserves the right to refuse permission for the member of staff to undertake or continue with the consultancy in question.
- 8.7. No use may be made of facilities, resources, equipment or premises belonging to the College whilst undertaking private work without the explicit agreement of the Head(s) of the relevant Departments or facilities, and subject to appropriate charges. The use of College IT resources for this purpose should be in accordance with the General Regulations relating to IT.
- 8.8. The College's name and/or endorsement (including use of a Goldsmiths email address, headed paper, College business cards, and other branded materials) may not be used in connection with private consultancy. The College may require that an indemnity is given against all costs incurred as a result of the individual's consultancy work.
- 8.9. Members of staff undertaking private consultancy and other paid work other than with the College are responsible for their own financial and tax arrangements and for complying with all statutory requirements laid down by HM Revenue and Customs or other bodies and should seek appropriate independent professional advice.

9. Intellectual Property

- 9.1. It is the policy of the College that the product of consultancies carried out through or on behalf of the College is of value and should be owned, protected and used by the College for the general good of the whole College community. This position is subject to negotiation where the expectation of some new IP being created is of particular interest to clients. In these situations, the proposed creation of new IP should be reflected in the consultant's fee. All staff are required to discuss IP issues with the Business Development Office in advance of carrying out any work likely to lead to its creation.
- 9.2. Disbursement of future income or royalty from IP, patents etc will be agreed between the College, the Department and the individual.

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