

Commercial Costing and Pricing policy, approved by University Executive Board 16/6/20

1. Purpose

This policy provides an over-arching framework for the costing and pricing of work done with commercial and other external partners. The principles relating to research activity have been discussed at University Research and Innovation Committee; those relating to consultancy at University Executive Board; and those relating to Lifelong Learning and in particular Continuing Professional Development (CPD) with the Dean of Lifelong Learning and Professional Practice (LLPP). However, the attached policy is the first time that they have all been brought together in one document.

2. What is covered by the policy?

All work funded by external funders which does not fall within the UK government's dual funding mechanism. The policy includes Research (both 'Contract Research' and 'Academic-initiated collaborative research'), Consultancy, Academically-Delivered Professional Services (including Additional Clinical Practice) and Lifelong Learning, in particular Continuing Professional Development and Lifelong Learning.

3. Who does the policy apply to?

All staff (including Professional Support Services).

4. Roles and responsibilities

The policy is owned by the Executive Director of Finance and the Pro-Vice-Chancellor (Research Strategy and Resources). The Director of Business Development and Enterprise will have responsibility at Senior Officer level for implementation

5. Policy

The policy is designed to provide an over-arching framework for the costing and pricing of work done with commercial and other external partners. It has been produced in order to:

- Give an overview of the different types of externally funded work and provide general guidance on categorisation
- Address specific concerns relating to a falling level of cost recovery from commercially-funded research
- Provide recognition that, for some specific consultancy contracts – for example those with the VCSE sector, policy-makers and the HE sector – pricing of individual contracts may need to reflect the ability of customers to pay and the wider demonstrable non-financial benefits to the University of such work
- Clarify that personal consultancy is **not** allowed if this is within the academic's employed area of expertise. The only route in future will be University consultancy.
- Provide clarification that Lifelong Learning and Continuing Professional Development (LLCPD) is out of scope of the consultancy policy outlined in Annex 2 in all respects.
- Incentivise and reward academics' engagement with commercial, VCSE and other non-traditional funders, including providing guidance on some general principles about sharing of surplus income, while retaining Faculty-level flexibility

6. Related regulations, statutes and policies

The University's Financial Regulations

7. Procedure to implement the policy

The policy will apply with effect from 1 August 2020.

8. Monitoring and reporting on compliance

What monitoring will be undertaken to determine how effectively the policy is implemented and where any results will be reported?

What will be monitored?	Frequency	Method	Who by	Reported to
(Improved) cost recovery on commercial research	Quarterly	Via quarterly research data	Finance	URIC
Numbers of contracts associated with each activity (and their associated income)	Annually	HEBCIS returns	BDE	HEIF oversight committee, finance, UEB
Compliance with the policy	Quarterly	Internal checks	BDE	Exec Director of Finance

9. Failure to comply

This policy will become part of the University's Financial Regulations and therefore breaches will be dealt with under those terms.

Equality, Diversity and Inclusion Analysis: Does the policy have the potential to impact on people in a different way because of their protected characteristics? Yes/ No/ Unsure If yes or unsure please consult the Diversity Team in HR for guidance	
Initial assessment by: Christine Younger	Date: 17/6/19
Key changes made as a result of Equality, Diversity and Inclusion Analysis The current consultancy policy includes reference to the ability for academic staff to undertake private consultancy 'outside normal and contracted working hours'. The EDI analysis undertaken is part of the rationale for the removal of this option from the consultancy section of the current document Further assessments were made during January and February 2020 where possible impacts on staff carrying out work internationally (or for non-UK based companies) in countries whose laws and practices may not be compliant with UK law or University policy were identified. These issues will be addressed via training of the Commercial Projects team and a review of University Terms and Conditions, to be carried out by the Legal Team	
Document location	

Background and principles

The University has adopted, in common with other UK universities, the principle of Full Economic Costing (FEC) across all of its externally funded work. This principle recognises the role of universities in doing work for the general public good, which might mean engaging with commercial partners who aim to take our research into practice for economic benefit. However, it is important that we do not, whether inadvertently or by design, subsidise private companies by doing work for them below FEC rates. Failure to adhere to these principles could contravene State Aid rules and might ultimately have an impact on the University's charitable status.

Moreover, in some circumstances the University adds value over and above FEC: for example, through providing specialist knowhow or access to unusual facilities. This added value should be recognised in the price paid by external partners, which would therefore exceed the FEC.

Most of the income covered by these policies we receive as a University comes from commercial, i.e. for-profit, organisations who seek to work with us in order to gain a commercial advantage from our insights or facilities. This policy is not designed to cover standard non-commercial University research (see below), which falls within the UK government's dual funding mechanism that combines contributions from QR and grant funding. However, the policy does apply to non-commercial paid external party interactions such as consulting on policy for government organisations and providing Lifelong Learning and Continuing Professional Development to the public sector.

The underlying principle, therefore, of all of the work we do for and with external parties outside of the dual funding mechanism is that it is charged at Full Economic Cost as a minimum and that work for commercial partners is usually charged above this level, so that surplus on commercial income helps to underpin the general running costs of the University, allowing it to carry out its primary purpose more effectively.

Definitions

There are four general types of commercial or externally funded activity:

Research: refers to the creation of new knowledge. This policy explicitly does not refer to research funded by Research Councils or other funders (such as charities) operating within the dual funding arrangements, or to research where the non-commercial grant includes the participation of commercial partners. For research funded directly by commercial partners, the policy makes a further differentiation between:

Contract Research: where new research work is done for the direct benefit of the external partner, i.e. where the partner owns all new Intellectual Property generated by such research.

Academic-initiated collaborative research: where the research question is initiated by an academic, often in discussion with a partner, and the outputs (including Intellectual Property) are owned by the University.

The policies for both types of commercially funded research are outlined in Annex 1.

Consultancy: refers to the utilisation of existing knowledge to the benefit of the external partner.

The policy for consultancy is detailed in Annex 2.

Academically Delivered Professional Services: refers to the provision of other academic services, such as referee, peer review or external examining fees as well as the receipt of book royalties. This also includes Additional Clinical Practice carried out by clinical academics.

The policy for Academically-Delivered Professional Services is detailed in Annex 3.

Lifelong Learning and Continuing Professional Development (LLCPD): refers to the provision of training or learning activity by which external individuals maintain the knowledge and skills required for their profession/employment. It does not usually lead to any University-accredited certificate or course credit.

The policy for LLCPD is outlined in Annex 4.

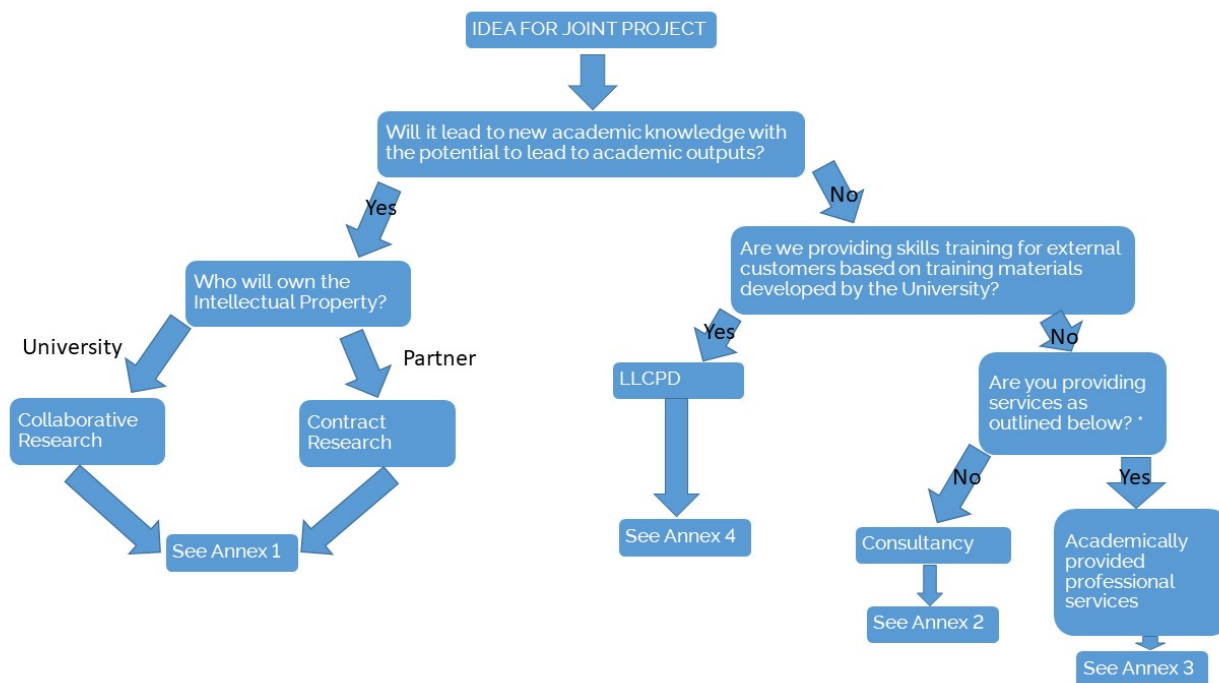
Differentiating between different activities

We recognise that the dividing lines between these areas are not always immediately obvious, so offer further guidance below.

The difference between research and consultancy is well documented in a variety of publications including the OECD’s ‘Measurement of scientific, technological and innovation activities’ (commonly referred to as the ‘Frascati’ manual, which is around 400 pages long). In summary, consultancy differs from research in that it involves the application of existing specialist knowledge or expertise to the particular needs of a client and is not expected to generate new knowledge. As consultancy is essentially a commercial arrangement, the client would ordinarily expect to own the results of the consultancy project, including any intellectual property. In contrast, research collaboration involves working in partnership in the creation of new knowledge, with the potential to generate academic outputs and for the University to own or share ownership of resulting intellectual property.

The difference between consultancy and LLCPD is not so well explored but, fundamentally, consultancy refers to the provision of advice or assistance with the solving of particular problems whilst LLCPD is a more general dissemination of current knowledge, including that shaped by original research, and skills to professionals in order to keep them up to date with developments in their own field.

The simple flow diagram below chart below summarises these issues:



*Academically provided professional services: book royalties; income from learned journals; Joint Editorial board or related duties; reviewing book proposals/manuscripts; peer reviewing; external examining; external

ad hoc lectures at other HEIs on credit bearing courses; presentations and external review/Audit Assessment.

Some examples of the kind of work carried out by University staff are given below. These are obviously not comprehensive examples, but are merely intended to outline some common scenarios. In all cases, academics should check with the Business Development and Enterprise (BDE) team if they are not clear on likely categorisation.

- a) A pharmaceutical company wants some advice on developing a new drug, which involves a literature review and the production of a report. As this doesn't involve any original research, it is **consultancy**
- b) The same pharmaceutical company is commissioning some analysis of possible side-effects of their new drug following its approval, which includes an analysis of samples from patients and the creation of new knowledge about its metabolic effects. They want to have exclusive access to the results of this work. This is **contract research**
- c) An academic working in the same field as a pharmaceutical company wants to test their own hypothesis accessing the company's drug compounds. There may therefore be future value to the company as well as an academic output. This is **Academic initiated collaborative research**
- d) The pharmaceutical company wants an academic in the field to deliver a lecture to its sales force on the current state of research into the disease that this drug addresses. This is **LLCPD**
- e) A journal commissions an academic to provide an opinion on a publication. This is **Academically delivered Professional Services**
- f) A government department wants to model the likely effect of a new housing policy and needs to understand its effect on interest rates. This is **contract research**.
- g) The government department wants an academic to act as an expert witness to a panel considering the possibility of introducing such a new policy. This is **consultancy**
- h) Following the introduction of a new government housing policy, the academic wants to deliver training courses to housing professionals, explaining the latest research on the likely long-term effects of the policy. This is **LLCPD**
- i) The delivery of a third party's LLCPD course materials where Newcastle University has had no input into the development of the course materials. For HEBCIS purposes this is not LLCPD – instead we are providing a service, so this is **consultancy**. Similarly, if Newcastle University prepares LLCPD materials for a third party to deliver – this is also **consultancy**.

Annex 1: Costing and pricing of commercial research

Key Principles

- Costing: All costs for commercial research work must be calculated and recorded via the NU Projects system, using the same internal support mechanisms as for costing of research proposals to UKRI and other funders.
- Pricing: All commercially funded work must be discussed with Business Development and Enterprise (BDE): a nominated Business Development Manager (BDM) will work with the academic to negotiate a price with the funder.
- **Academic initiated collaborative research** will be priced at FEC as a minimum, and will usually attract a mark-up of at least 25%. All IP will also be owned by the University, although funders may be granted a right to first negotiation of commercial terms, confidentiality clauses and withholding of publications for a limited time. The University must also retain the right to publish all research and to use it in further teaching and research.
- **Contract research** will be priced at FEC + 25% as a minimum, and will usually attract a mark-up of significantly more. All new ('foreground') IP will be owned by the funder although the University will retain the right to use research outcomes in further teaching and research and for publication, sometimes after a defined period during which IP rights will be filed.
- (NB: Where there is an element of **consultancy or LLCPD work** in the same project, this will be managed in a parallel but separate agreement (see Annex 2 and 4))

Approval mechanisms

- There may be occasional circumstances – for example, where the funding might leverage significant additional funding – where commercially-funded research can be carried out without recovering the FEC. Only Faculty PVCs will have the authority to approve this in exceptional circumstances and it cannot be authorised at Unit level (although the Faculty PVC may delegate authority to an appropriate named Faculty Dean). Any uncertainties on these issues can be resolved in consultation with the PVC-Research Strategy and Resources or Director of Business Development and Enterprise.
- There is a new 'traffic light' system for approvals, as follows¹:
 - Green: All research projects adhering to the minimum 25% mark-up.
 - Amber: Any research projects priced between 100% and 125% FEC, where approved by the relevant BDM as part of wider commercial considerations. The Head of Unit will still have the absolute right to reject.
 - Red: Where a) the Head of Unit has explicitly accepted the losses to the Unit based on reduction of indirect costs and b) the Faculty PVC, or a nominated deputy acting with the explicit authority of the PVC, has approved. Approval can never be given on an open-ended or long-term basis beyond one specific project.

Surplus income

¹ In the longer term this will be automated within NUProjects. In the interim, appropriate email approvals will be obtained and uploaded to NUProjects

In no circumstances can surplus income received from commercially-funded research be taken as personal payments by academics. However, all surplus over FEC will be distributed in accordance with relevant Faculty policies: the intention is that an appropriate account designated by the academic in accordance with Faculty policy will benefit equally as much as the Academic Unit/Faculty account².

² We recognise that these definitions will vary by Faculty. The intention, however, is that the most relevant budgetary Unit at School/Faculty level and the most relevant budgetary Unit at individual PI/research group level each benefit equally

Annex 2: Costing and pricing of Consultancy activity

Consultancy is the provision of services for third parties which are not credit-bearing teaching or research. It does not involve the generation of new knowledge or original investigation or research but will involve at least one of the following:

- a) Use of the University's, Faculty's, School's or other University Unit's name and/or logo
- b) Use of any University facilities or staff (including the time and academic expertise of the member of staff undertaking the consultancy)
- c) University premises (including correspondence or contact through the University e.g. email, telephone)
- d) Any consultancy which the member of staff wishes to undertake in order to be covered under the University's insurance policies (such as professional indemnity insurance).

Expert witness work is covered under this policy.

All consultancy activities should be costed and priced via NUProjects and will include the Head of Unit/School approval as part of this process.

All University consultancy contracts must be negotiated and dealt with through the Commercial Projects team, part of Business Development & Enterprise. The team will draw on their knowledge of the market and work with the academic to secure the most suitable price for such work.

For work with commercial partners, it is generally expected that FEC (Full Economic Costs) plus the best possible commercial mark-up will be recovered. However, it is recognised that in certain circumstances where there are significant and demonstrable non-financial benefits to the University of an individual undertaking an external contract (such as the value of marketing/brand awareness of an individual fronting a nationally broadcast TV/radio programme or series, or an individual becoming a member of a government committee or journal Editor in Chief) this may not be achieved. In addition, it is recognised that projects involving PhD students may also be below/have a reduced FEC level.

Approval by an individual's Head of Unit/School must be given for ALL consultancy work prior to carrying out the work. In certain cases, where it is anticipated that there will be a series of consultancy engagements with a particular partner over a period of time, generic approval may be given rather than having to seek approval for each specific instance. The academic will be responsible for obtaining any necessary approvals and for declaration of this external work in their own Declaration of External Interest (see the University's 'Policy on Declarations of External Interests', available on the 'Policies' section of the staff homepage)

In order to incentivise staff to engage in University consultancy and to ensure that both the University and the individual academic benefits, there are two options for distribution of income received from such consultancy. Either:

- a) If an individual wishes their internal University accounts to benefit: All net income (after any direct non-salary costs such as consumables, sub-contracted work, travel, etc., together with the salaries of some Research Associates (see note below) is split equally between an appropriate account designated by the academic in accordance with Faculty policy and the Academic Unit/Faculty account³⁴, or

³ Where the individual has a Faculty or central University role (e.g. Dean/PVC), approval should be from the line manager rather than the Head of Unit/School

⁴ We recognise that these definitions will vary by Faculty. The intention, however, is that the most relevant budgetary Unit at School/Faculty level and the most relevant budgetary Unit at individual PI/ group level each benefit equally

b) If an individual wishes to benefit personally: All net income (after any direct non-salary costs such as consumables, sub-contracted work, travel, etc., together with the salaries of some Research Associates (see note below)) is split equally between the academic unit holding the salary budget and, after deduction of employers NI and then, subject to income tax and employee's NI, the individual.

Should a staff member wish to take a personal payment on a project in excess of £10,000 overall value, they must obtain the written approval of the Head of their Academic Unit which should be forwarded to the Commercial Projects team, prior to the project costing being submitted for sign-off on NUProjects.

For clarity, only direct non-salary costs will be deducted prior to distribution. Salary costs and FEC will not be deducted. However, should a Research Associate be involved in the delivery of consultancy and their salary is already covered 100% from other external funding – that salary in respect of time spent on the consultancy project will need to be deducted from the surplus prior to distribution. This ensures the RA's salary cost to the University does not exceed 100%.

Annex 3: Costing and pricing of Academically-Delivered Professional Services and Additional Clinical Practice

The following activities are defined as academically-delivered professional services:

- a) Royalties from the publication of books
- b) Proceeds from articles published in learned journals
- c) Refereeing of articles in learned journals
- d) Acting as a member of a Journal Editorial Board or related editing consistent with normal academic practice
- e) Reviewing book proposals or manuscripts for publishers and advising on publication
- f) Peer reviewing research proposals for research sponsors
- g) External examining
- h) External *ad hoc* lectures at other HEIs on credit bearing courses and conference presentations
- i) External Reviewing and Audit Assessment
- j) Works of creative practice in the arts (e.g. sculpture, paintings, and music) which are separately commissioned by third parties.
- k) Additional clinical practice (as defined further in the University's financial regulations)
- l) Non-Executive Directorships relating to the academic's area of expertise

Major commercial editing and similar contracts (such as Editor in Chief positions) and related academic services are **not** considered as academic professional services and are dealt with under Consultancy (Annex 2 above).

The costing and pricing of such activities are entirely a matter for individual staff, who may retain all revenues from academic professional services personally through direct arrangements with the third party. Where staff wish such payments to be made through the University then the Academic Unit will raise the invoice and the distribution of income will be treated in accordance with the specific wishes of the academic (so long as the distribution is in accordance with University Financial Regulations). Invoices for royalty income shall be raised using the appropriate sales material to ensure such income is accurately recorded in the University's accounts.

Approval by an individual's Head of Unit/School must be given for any Academic Professional Services work with a gross value over £1000⁵ prior to carrying out the work. In certain circumstances, where it is anticipated that there will be a series of such engagements with a particular company/partner over a period of time, generic approval may be given rather than having to seek approval for each specific instance.

The Member of Staff is entirely responsible for the declaration of any income to HM Revenue and Customs (HMRC) using a personal annual return and taxable income declaration.

⁵ It is not intended that academics should seek approval for low-value but important academic work such as many of the services referred to here; the £1000 threshold will be reviewed in 2022 as part of a review of financial implications of this policy

Additional Clinical Practice

Additional clinical practice is defined as *“non-NHS clinical work which generates a payment to the clinician”*.

Clinical academic staff employed by Newcastle University are permitted to undertake additional clinical practice providing all of the following is the case:

- a) The employee has and maintains Medical Defence Union (or equivalent) cover which includes indemnity in respect of the activity
- b) Such activities are undertaken in appropriately licensed and equipped premises where the equipment and facilities are in good working order
- c) When corresponding with clients on additional clinical practice, employees must not use University business cards, logo, notepaper, letter headed paper, address, email using university user or domain name, or in any way imply that the activity is “official University business”
- d) The client acknowledges that the activity is additional clinical practice
- e) That the activity is documented and agreed under the Job Plan Review and Follett papers; where the activity is other than occasional it must be incorporated into the Schedule of Programme Work which may result in an amendment to Programmed Activities (PAs)
- f) That in advance of the work the Dean of Clinical Medicine has been notified through the Manager of the Clinical Deanery with a note of the organisation and premises where the activity will be undertaken and its frequency
- g) Such work is scheduled appropriately and does not conflict with University or agreed NHS duties

Annex 4: Costing and pricing of Lifelong Learning and Continuing Professional Development (LLCPD) activities

Key Principles

- **Costing:** All costs for LLCPD activity must be calculated and recorded via the NU Projects system. The costing and pricing of LLCPD will be carried out by the Commercial Projects Team (BDE).
- **Pricing:** All commercially funded work must be discussed with the Commercial Projects Team. It is recognised that there may be occasions, particularly when working with the public and VCSE sector, that some LLCPD may be delivered at less than cost, but this must be approved in advance and recorded: in such cases the course will normally be open to any participant and will not be restricted to a specific target audience.
- **Intellectual Property:** The University must retain rights over all teaching materials developed for LLCPD courses, including the right to use the materials with other learner groups. In exceptional cases, with a large commercial mark-up on price, we may allow the funder to own the IP

Approval mechanisms

- New LLCPD courses, developed specifically for groups of learners and requiring the production of new course material, require the approval of the Head of Academic Unit, in the context of the workload modelling mechanism. If the course is credit bearing, i.e. it can lead in any way to a University academic award, then additional approvals will be required via the Learning and Teaching Development Service. . If the course is accredited by another partner organisation, e.g. a professional body, additional approvals might be required by the University and/or the partner organisation. For specific advice contact: BDE team, Faculty CPD Manager and Dean of LLPP and the partner organisation.

Surplus income

In no circumstances can any income received from LLCPD be taken as personal payments, in addition to salary, by academics. Where there is additional income as a consequence of LLCPD delivery:

1. Where no extra work has been involved in course production (using existing modules and teaching materials etc.), all income is retained by the Academic Unit
2. Where extra work is involved, the surplus after the deduction of the direct non-salary costs incurred in the development of the course materials is split equally between an appropriate account designated by the academic in accordance with Faculty policy and the Academic Unit/School account⁶
3. Where 2 academic units are involved , the starting point is that there will be a pro rata distribution of income based on the relative contributions of staff (before any internal distribution within Units in accordance with point 2 above)

⁶ We recognise that these definitions will vary by Faculty. The intention, however, is that the most relevant budgetary Unit at School/Faculty level and the most relevant budgetary Unit at individual PI/ group level each benefit equally