POLICY ON CONFLICT OF INTEREST

This policy sets out what a conflict of interest is and how it should be managed within the University by all staff.

1. Introduction

1.1 This document sets out the policy and procedures for managing and/or declaring a conflict of interest situation within the University.

1.2 This document should be read in conjunction with the Financial Regulations, the Spin Out Company Regulation and the Intellectual Property Policies of the University.

1.3 Heriot-Watt University is an institution of public trust and all members of staff must conduct their affairs in ways that will not compromise the integrity of the University.

1.4 The purpose of this document is to give individuals the opportunity to record any concerns they may have in relation to the possibility that a conflict of interest could arise in their own area of work. In officially acknowledging any such possibility, the individual is reassured that the University is aware of the situation and that appropriate action, if any is needed, will be taken; this is very often all that is required to allay both the individual’s sense of vulnerability and University concerns. This policy is designed to:

- Heighten the awareness of members of staff about situations that may generate conflicts of interest;
- Provide means for members of staff and the University to manage potential and real conflicts of interest; and
- Ensure that activities undertaken are in the best interests of students, staff and the University as a whole.

1.5 A primary test and resolution of any potential conflict of interest is to ensure pre-approval of the intended task or obligation by the appropriate Head of School or Section, against the following guidelines.

2. Definitions

2.1 ‘Conflict of Interest’ is defined as any situation in which an individual’s obligations to the University differ from his obligations to any third party, from the individual’s personal interests or from those of his immediate family, whether financial or otherwise, and when those other obligations and interests may, or may be perceived,
to influence the individual’s performance of his/her obligations to the University. Situations that may give rise to a conflict of interest include, but are not limited to:

- Executive and Non-Executive Directorships
- Licensing of Intellectual Property
- Outside Activities and Consultancy
- Research projects
- Equity Interests
- Teaching and Assessment of Close Relatives
- Continuous Professional Development delivery of courses/programmes

2.2 ‘Duty of fidelity’ is defined as the duty of faithfulness owed by an employee to his/her employer by virtue of his/her employment. The employee also undertakes not to act against the interests of the employer’s business. A full list of obligations owed by university staff to their employer, the University, is set out in Appendix A of this document.

2.3 ‘Academic freedom’ does not overrule the duty of fidelity owed by an employee, nor should it give rise to a conflict of interest.

2.4 ‘Conflict of commitment’ is defined as commitment on an individual’s time which results in the professional obligations of the individual to the University being neglected or not fulfilled to the best of the individual’s abilities. The treatment of time for personal/domestic commitments is normally as defined in the current terms and conditions of employment.

2.5 ‘Confidential information’ is defined as any information created or received by a member of staff in the course of University business that would be exempt from the public right of access under the Freedom of Information (Scotland) Act 2002 (FOISA) upon challenge by the University (or the owner of the information if it has been received from a third party) of an application for disclosure under that Act. Confidential information may include (but is not limited to) medical records, personnel records, student records, security records, proprietary knowledge about anticipated corporate material requirements or price actions, information about forthcoming research or business activities, information about contractor/subcontractor selection ahead of official announcements, research information (including but not limited to research results, tables, graphs, formulae, apparatus, experimental set-up, computer code, engineering drawings, parts lists) and laboratory notebooks.

3 Why there is a requirement for a Conflict of Interest policy?

3.1 As employees of Heriot-Watt University, all members of staff have a duty of fidelity\(^1\) to the University under their contracts of employment. All members of staff are

\(^1\) ‘Fidelity’ means that an employee must serve his/her employer faithfully and not act against the interests of the employer nor set up or be involved in a rival operation.
obliged to give a prime commitment of time and intellectual ability/energy for the benefit and well-being of the institution. Specific responsibilities and activities that constitute this commitment will differ across the University, but must be based on an understanding of what is acceptable between the individual member of staff and the institution. (See Appendix A)

3.2 The risk of conflict of interest arises when there is a divergence, or possible divergence, between an individual’s private interest, or the interests of any third party with whom, or with which, the individual is associated or connected, and his/her obligations to the institution, such that an independent observer might reasonably question whether the individual’s actions or decisions are determined by considerations of personal gain, financial or otherwise, to the member of staff or associated or connected third party.

3.3 Conflicts of interest are common in a modern institution and may arise in relation to internal or external situations, as well as the character or actions of individuals. For the purposes of this policy, conflicts of interest may arise typically, but not exclusively, in the context of learning and teaching, assessments/examinations, external examining, staff and/or student close personal relationships\(^2\), finance, discipline, appointment of staff, promotion, procurement, research, consultancy, intellectual property and commercialisation.

3.4 It is not acceptable for an individual’s actions or decisions made in the course of his/her University activities to be determined by considerations of personal gain, other than normal aspirations and behaviours related to promotion or professional development. Such behaviour calls into question the professional objectivity and ethics of the individual and reflects negatively on the University. Heriot-Watt University is an institution of public trust; members of staff must respect that status and conduct their affairs in ways that will not compromise the integrity of the institution, by avoiding and minimising conflicts of interest, and behaving responsibly when conflict of interest situations arise.

### 4 Key Provisions of Conflict of Interest Policy

4.1 An appointment of a member of academic staff of Heriot-Watt University confers the privilege and obligation to pursue teaching, research and other scholarly duties.

4.2 An appointment as any other member of staff confers the obligation to carry out the duties of the position to the best of the member of staff’s abilities.

4.3 Furthermore, an appointment as Principal, Vice-Principal, Deputy Principal, Head of School/Institute or Dean, carries with it the expectation of participation in University governance, in the formulation of academic policy and in the determination of the

\(^2\) A ‘close personal relationship’ is defined as such by virtue of consanguinity or conjugality (family relationship, personal partnership, civil partnership or marriage). The term may also apply to close personal friendship, business partnership or association.
academic priorities of the University. Fulfilment of the obligations requires a primary commitment of expertise, time and energy.

4.4 Since requirements for field research and other reasons for absence from campus differ across the University, each School/Section should define what is meant by inappropriate, extended or frequent absences for the benefit of the staff within that School/section. Policy and procedure for leave of absence or sabbatical leave should be adhered to.

4.5 Staff must maintain an appropriate presence on campus (Edinburgh, Galashiels, Dubai or Orkney) throughout the term of their contract. All external activity, even such as government service in the public interest, must be managed in agreement with the Head of School/Section so as not to take precedence over a member of staff’s primary commitment to the University. Aside from time commitments, external professional activities which are not undertaken as a primary activity for the benefit of the University can generate conflicts of interest, in particular, but not exclusively, where:

- Use of Heriot-Watt University resources is unavoidable in practice;
- Action can result in placing students and staff in conflict of interest situations.

It is difficult, if not impossible, for the University to review and reward contributions of Heriot-Watt University staff and students for work undertaken elsewhere;

4.6 Clear boundaries must be established to separate University obligations and external activities in order to avoid questions about appropriate use of resources and attribution of products resulting from work undertaken.

4.7 Staff must disclose current or prospective situations involving or potentially involving conflict of interest as soon as such situations become known. Further information is provided in this document on appropriate procedures.

4.8 Staff must not allow other activities to detract from their obligations to the University. For example, a staff member must not have significant outside managerial responsibilities and may not act as principal investigator on sponsored projects submitted and managed through another institution which could be conducted at Heriot-Watt University, unless this is in the form of an approved, structured and co-sponsored research collaborative activity.

4.9 The integrity of the University as a community of scholars requires the free and open exchange of ideas and results of scholarly activity. Staff are obliged to maintain an atmosphere free from unwarranted external influences. Students and staff must be able to pursue topics of interest, have access to available information and facilities, and be able to communicate results of work to other scholars and the public (taking into account issues of confidentiality as defined in this document).

4.10 Subject to the obligations of confidentiality set out in this policy statement staff must encourage an atmosphere of academic freedom by:
• Dissemination of open and timely exchange of results of scholarly activities to the broader scholarly community and public in accordance with Heriot-Watt University ‘Policy on the Ownership, Protection and Exploitation of all forms of Intellectual Property Research Results and Computer Software’;

• Ensuring that advice to students, researchers and other members of staff is independent of advancement of personal interests;

• Ensuring that the work of other members of staff, researchers, students and collaborators is not appropriated, adopted or used unfairly or otherwise inappropriately by being open about involvement with, and obligations to, third parties who could benefit from work or ideas of students, staff and colleagues.

5 Limitations on Outside Professional Activities

5.1 The University encourages staff to become involved in knowledge and technology transfer activities to benefit not only the University and the member of staff but also the general public. However, the knowledge and technology transfer processes can create actual or potential conflicts of interest, particularly when there is opportunity for personal gain on the part of the member of staff or any agents assisting in the transfer.

5.2 To minimise the likelihood of such conflicts, Technology & Research Services must handle all knowledge and technology transfer transactions.

5.3 Staff must not allow other activities to detract from their obligations to the University. For example, unless approved by the University to undertake the activity, a member of staff must not have significant outside managerial responsibilities (such as a Directorship, whether Executive or Non-Executive), nor act as a principal investigator on sponsored projects that could be conducted at Heriot-Watt University but are instead submitted to and managed through another institution, organisation or corporate body.

5.4 An implicit assumption underlying the University’s "Guidance and rules governing consultancy undertaken by members of staff", as detailed on the University website is that such outside professional activities must be contributory to, and must not detract from, a member of staff’s obligation to their University duties.

5.5 All members of staff must also ensure that conflicts of commitment do not arise from any outside professional activities.

5.6 Members of staff employed to undertake research must not engage in research activities that are not submitted formally through Technology & Research Services.
5.7 Payments for activities such as external examination duties at other Universities or for attendance at Research Council panels would not normally be considered as conflict of interest.

6  Dissemination of Research Results

6.1 Subject to the obligations of confidentiality set out by this policy statement the integrity of the University as a community of scholars requires the free and open exchange of ideas and the results of scholarly activities (dissemination of research results).

6.2 Members of staff are obligated to maintain an atmosphere free from unwarranted external influences.

6.3 Members of staff must be able to pursue topics of interest, have access to available information and facilities, and be able to communicate the results of their work to other scholars and the public.

6.4 Members of staff are reminded that, in line with the UK Patents Act 1977 (as amended by the UK Copyright Designs and Patents Act 1988) the University is the owner of intellectual property developed by the employee under the terms of their employment. Further information on the ownership of intellectual property, and the management of student-generated intellectual property may be found in University policies on Intellectual Property, which are available on the University intranet.

6.5 Members of staff conducting research must ensure that the activities of students, research associates and postdoctoral researchers are free from the personal interests of the staff member (whether commercial or otherwise).

6.6 Members of staff conducting research must also ensure that the work of students, other colleagues, post-doctoral researchers and external collaborators is not exploited in the course of a member of staff’s personal interests or activities. Accordingly, members of staff should be open and honest about their involvement with and obligation to third parties outwith the University who could benefit from the work or ideas of their students, research associates, postdoctoral researchers and colleagues.

6.7 Students, research associates and postdoctoral researchers should have access to information about the source(s) of funding that support their research.

7  Inappropriate Use of University Resources, including Facilities, Personnel, Equipment and Information

7.1 Staff may not make use of University resources without prior authorisation of the Head of School/Section and never as a ‘favour’ in an attempt to exert undue influence or for the potential or real personal gain of the individual rather than the advancement
of scholarship/educational purposes and University interests. ‘Resources’ includes use of facilities, staff, students, researchers, equipment and confidential information.

7.2 Staff must not make unauthorised use of or disclose to others confidential information acquired through conduct of University business.

7.3 A member of staff must not use university resources, including facilities (laboratories, offices etc), personnel, equipment or confidential information in any way as part of their outside professional activities or for any other non-University purpose without the express permission of the Head of School, Institute or Department. “University Purpose” can include activities for promoting beneficial relationships with other organisations (e.g. rotary club functions).

7.4 Inappropriate use of University resources includes (but is not limited to) the following:

- Giving tasks to students, colleagues or postdoctoral researchers for the purposes of advancement of the member of staff rather than the advancement of research or to further the educational needs of the student;

- Involving staff or students in a member of staff’s outside business or consulting activities, without the prior approval of the appropriate Head of School or Section;

- Granting access to third parties to University resources or services for activities from which the University will not benefit (whether financially or otherwise);

- Attempting to influence third parties unduly in their dealings with the University by offering inducements of any kind, or otherwise.

- Using for personal gain confidential information acquired through the conduct of University business or research activities;

- Allowing third parties to have unauthorised access to confidential information acquired through the conduct of University business or activities; and

- Providing preferential access to research results, teaching or other materials or products generated from University activities to a third party for personal gain (whether financial or otherwise). This DOES NOT include licensing or preferential access arrangements agreed through Technology & Research Services.
7.5 Staff must disclose to the University whether, to their knowledge, they, or members of their immediate family, have a possible conflict of interest arising in conjunction with the acceptance of the following (as defined by AUT documentation of 8th December 1998):

Gifts (of any nature)
Sponsored projects
Technology licensing arrangements
Procurements
Additional Fees
Equity participation

In such cases, formal University approval must be obtained prior to entering into each proposed arrangement.

Common-sense should prevail in the interpretation of these provisions.

8. Technology Transfer Activities

8.1 All technology transfer activities (including but not limited to technology licensing, technology sales, spin-out and start-up company formation, intellectual property assessment, protection and management and confidentiality agreement execution and management) must be handled by Technology & Research Services.

8.2 The University is committed to maximising value from all commercialisable innovations embodied with intellectual property created by members of the University, and accordingly all members of staff must conduct technology transfer activities through Technology & Research Services to avoid conflicts of interest arising and to ensure the University's contractual obligations are fulfilled.

9 Management of relationships with companies or other third parties that supply goods and services to the University

9.1 All relationships that members of staff have with companies or other third parties that supply good and services to the University (whether through Procurement, through sponsorship of or collaboration on research projects or as partners in technology transfer activities, or otherwise) must be managed in accordance with:

- the Financial Regulations of the University; and
- the Disciplinary Rules on gross misconduct as described on the University website.
10 Scientific Objectivity

10.1 Questions of scientific objectivity may arise even where a conflict of interest is being managed appropriately.

10.2 If there is any question of gross misconduct it should be dealt with according to the University policy governing misconduct. It should be noted that the falsification of results is considered by the University to be a serious academic offence (gross misconduct).

11 Policy Implementation

11.1 All members of staff must initially certify their compliance with this policy, and update their declaration if appropriate when circumstances change. All new staff will be required to certify their compliance with the Policy prior to commencing employment.

11.2 As part of the compliance procedures, each member of staff must disclose, to their knowledge, their and their immediate family's activities for, and financial interests in, organisations outwith the University, where these same organisations support or have input into their University teaching or research activities. 'Financial Interests' are defined as a significant and potentially influential shareholding for the purposes of this policy.

11.3 Conflicts of interest of a non-financial nature should also be disclosed. For example, if a member of staff has a family member studying within the University and has access to exam papers of that School through their position with the University, or if a member of staff has written a textbook and wishes to recommend that textbook as a preferred textbook for a course they are teaching. Close relationships should also be declared by staff involved in promotion or appointment of other staff.

11.4 The information disclosed by a member of staff will be held in complete confidence and will not be used for any purposes other than for compliance with this policy.

11.5 The compliance form is included as Appendix B of this policy document and examples of conflict of interest are given in Appendix E of this policy document.

11.6 Upon completing the compliance form, the form should be returned to the appropriate Head of School or Section for review.

11.7 The Head of School or Section shall review all forms and certify all forms that do not show a conflict of interest.

11.8 Any compliance forms that show a conflict of interest shall be reviewed by the appropriate Head of School or Section with the Director of People and Organisational Development and Vice-Principal, and an appropriate course of action agreed upon. Such a course of action may require further information being sought from the
member of staff or further investigation by the Director of People and Organisational Development, for example. The form will not be approved until the Director of People and Organisational Development is satisfied that there is no conflict of interest, or that appropriate steps have been taken to manage the conflict of interest. A brief statement of the steps taken to manage the conflict of interest should be attached to the compliance form, and the member of staff informed by the appropriate Head of School or Section of the steps that they must follow.

11.9 All forms that have been certified by the Head of School or Section shall be sent to the Director of People and Organisational Development.

11.10 If a member of staff's circumstances change during the year, a new compliance form shall be completed as soon as possible after the member of staff is aware of the changes in circumstance.

11.11 All members of staff, must complete an initial compliance form by the deadlines set by their Head of School or Section. Delays may be possible if unforeseen circumstances prevent the member of staff from completing the form, for example, serious illness or family bereavement, and the member of staff is advised to contact their Head of School or Section as soon as possible if these circumstances apply.

11.12 Heads of School or Section and Senior Managers should return their completed compliance forms direct to the Director of People and Organisational Development.

11.13 Appeals of decisions should be made to the Vice-Principal, in writing, and the Vice-Principal may refer the appeal to the Planning and Management Executive if appropriate.

11.14 The Register of Interests of members of the governing body (Court) and committees of the Court, and senior management is available from the Secretary of the University in accordance with The University FOI Publication Scheme, section 3.5. The Register of Interests for other staff shall be available for inspection on written application to the Record Keeper. The Record Keeper will consult with the Director of People and Organisational Development and the FOI and Data Protection Officer to determine what if any of the information held in the Register is exempt from exempt from the public right of access under the Freedom of Information (Scotland) Act 2002 (FOISA) e.g. where releasing the information would breach any of the Data Protection Principles (Section 38.1.b of FOISA).


11.16 Failure to: complete a compliance form; revise it if circumstances change; or review it annually; and submission of a compliance form which has been deliberately completed in an incorrect or misleading way shall constitute a disciplinary offence and shall be dealt with accordingly.
This policy document will be distributed to Heads of Schools, Postgraduate Institutes and Sections annually in November and, through this route, must be brought to the attention of all members of staff.

12 Further Information

Further information regarding conflict of interest is contained in the following appendices and additional documentation:

Appendix A – Obligations owed by University staff to their employer, the University
Appendix B – Compliance Form
Appendix C – Company directorships held by members of staff
Appendix D – Responsibilities and Duties of Directors
Appendix E – Categorisation and examples of a conflict of interest

Additional Documentation:

University Intellectual Property Policy
University Policy on the Ownership and Management of Student-generated Intellectual Property
Regulation 42 – Spin-out company formation
Appendix A – Obligations owed by University staff to their employer, the University

1. Explicit Obligations

As set out in the member of staff’s contract of employment and the Policies set out on the University website, which includes this policy

2. Implied by Common Law

2.1 Duty of Fidelity is defined as the duty of faithfulness owed by an employee to his/her employer by virtue of his/her employment. The employee also undertakes not to act against the interests of the employer’s business. This includes an obligation not to work for another employer as long as the member of staff’s original employment continues, particularly if the member of staff is employed on a full-time contract.

2.2 Obedience to lawful and reasonable orders

2.3 Not to use or disclose without University authorisation any confidential information which the member of staff has obtained in the course of or as a result of their employment.

2.4 To work with due skill, diligence and care.
HERIOT-WATT UNIVERSITY
REGISTER OF INTERESTS
COMPLIANCE WITH CONFLICT OF INTEREST POLICY FORM

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<tr>
<th>Name</th>
<th>Position within University</th>
<th>School/Section</th>
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**YES**  **NO**  PLEASE ANSWER THE FOLLOWING QUESTIONS:

1. **Is there any relationship, either internal or external, which you feel could cause potential or apparent conflict of interest with your University activities?** If yes, please provide further details of the relationship below.

2. **Q1. Have you performed consultancy work or engaged in any other paid work in the last academic year other than that which has been pre-approved?**

3. **Q2. Do you have outside activities that involve Heriot-Watt University students?**

4. **Q3. To your knowledge, do you or any member of your immediate family have a significant or influential relationship with (or a financial interest when aggregated for your immediate family) any other the following:***
   - A third party that tests, markets or manufactures a product which could be evaluated or developed further through your research activities?
   - A third party, whose actions you are in a position to influence, which does business with Heriot-Watt University?
   - A sponsor or collaborator involved with research projects?
   - Any other business in which there could be a conflict of interest?

5. **Q4. Do you hold any position or appointment as a Director (Executive or Non-executive) or Company Secretary in any company, whether or not this company does business with Heriot-Watt University?**

6. **Q5. Are you aware of any other circumstances that could constitute a conflict of interest with your position within the University?**

If you have answered 'YES' to any of the questions above, please give full details overleaf.

PLEASE TURN OVER
• Q1 & Q2: For consultancy and other outside activities, please list the organisation(s) you have worked for, the duties performed and the time spent on the activity.

• Q3: Please give details of the relationship or financial interest. Examples: "Son, MD of Company X, sponsor of research project Z (cash contribution £Y)" or "My son is a student in the School of Management and I manage printing of examination papers for that school". Specific shares data or values are not required.

• Q4: Directorships/Company Secretary positions: Give date of appointment, name & address of company and state if company is involved IN ANY WAY with your research activities e.g. studentship provision, in-kind support, cash contributions, collaborator etc

• Q5: Give details of any other conflict of interest with your position within the University that you are aware of.

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<th>Date of appointment</th>
<th>Name &amp; address of company</th>
<th>State if company is involved in any way with your research activities</th>
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I acknowledge that I have read and understood the University policy on Conflict of Interest. I confirm that this form has been completed to the best of my knowledge and that the information contained on this form is true and correct. I understand that if the information is later found to be false I may be subject to disciplinary proceedings.

I understand that as a public authority under the Freedom of Information (Scotland) Act 2002(FOISA), the University may be required to disclose information I have submitted to the register of interests.

Signed ___________________________ Date: ____________

Reviewed by Head of School/Section on: ___________________________  Approved by Head of School/Section: YES | NO

Signed by Head of School/Section: ___________________________ Date: ____________

Approved by Director of People and Organisational Development: YES | NO

Signed by Director of People and Organisational Development: ___________________________ Date: ____________

On completion this form must be returned to the Director of People and Organisational Development, Lord Balerno Building.
APPENDIX C - Company Directorships Held by Members of Staff

The University recognises that staff may become Directors of Companies for a variety of reasons. However, whatever the motive for setting up the Company (whether it has been set up by a public-sector organisation as a "not-for-profit" body, to permit trading without imperilling the charitable status of the parent organisation, or whether the Company has been set up to exploit technology developed on campus for the financial benefit of the staff member concerned, or whether it is a publicly quoted Company seeking to recruit a member of staff as a Director for the expertise (s)he may bring) in every case, the directorship carries a number of duties that are legally enforceable, and whose negligent or reckless performance can have very serious consequences.

The University's insurance policies only cover University employees in the execution of their University business. Where University employees are appointed as Directors by the University to represent it, they can obtain a form of indemnity from the University Insurance Officer.

Directors of companies are not covered, in the event of misfeasance or breach of duty, by any professional indemnity insurance.

The general legal requirements placed upon Company Directors are summarised in Appendix D. It should also be noted that the latter requirements also apply to shadow Directors, a shadow Director being a person who is not a Director but is one whose instructions and views the Board act upon. The University will apply a test of substance rather than form in deciding if a member of staff is a director.

The primary problem with regard to those members of academic staff who become directors of companies that may do business with the University is the possibility of conflict of interest arising as a result, for example, of contracts being awarded in which the Director has a financial interest. Members of staff who wish to become Directors must be aware of their legal duties in this regard, and also be aware of the specific University requirements below.

Colleagues are strongly advised to seek advice from the University's Technology & Research Services if they are in any doubt about the requirements (listed in Appendix D), and must, in any case, inform the University using the Compliance Form in Appendix B if they hold any Directorship or Company Secretary Position.

They are also obliged to inform the University if they are Directors of companies doing any business with the University.

It should be emphasised that the University will require a contract between the Company and the University in respect of any Company that uses any form of University resource. The resources of the University are to be applied wholly and exclusively for the purposes of the University, and are not to be used by any companies for any purpose without first having a contract in place to regulate such use.

For members of staff in the University there are, therefore, certain additional requirements designed to ensure that Public Money cannot be used for private gain.

These requirements are as follows:
1. In general, staff are advised against joining the Boards of companies likely to place contracts with the University, or with which the University itself is likely to place contracts. University staff must not be seen influencing companies to place such contracts, or influencing the University to place contracts with their Company, particularly where there is any element of private gain. It is unacceptable for any member of academic staff to be in a position to legally bind both the Company and the University in respect of any decisions of this nature. The University has a clear hierarchy of decision making, and only the Heads of School and Section, or, if they are involved in the Company, the Vice-Principal/Secretary of the University, can take decisions on behalf of the University with regard to its dealings with companies. It is essential that these decisions are clearly defined in the form of a contract. Where a research, consultancy or service contract between the Company and the University is under consideration, the staff member concerned should declare his/her interest and should, under normal circumstances retire from the meeting whilst the contract is discussed. Under no circumstances should academic staff set up organisations, whether companies or other vehicles, solely designed to distribute research or consultancy income to themselves;

2. There must be clear separation of University duties from any duties within or for a company likely to lead to financial gain. This is particularly important where the Company is set up to market Intellectual Property derived from the Staff Member's research activities. It should be noted that the legal presumption is that all such IP is the property of the University; should the decision to license the IP back to the Company be taken by the University, on the basis that this offers the most attractive method for exploiting that IP, then such licensing will be done on the same basis as for any other company;

3. Staff forming a company may not use University premises as the address of that company's registered office. Further, no approach may be made to Companies House on the University's behalf other than through the Technology & Research Services Office;

4. Members of staff who wish to form their own companies must seek advice and approval through Technology & Research Services. However, care must be taken when approaching bankers, lawyers, accountants and other professional advisors to ensure that these advisors fully understand that the member of staff concerned is dealing with them in his/her or her own right as a director of a company and is not representing the University. The University does not provide company secretarial or accounting services directly, save in the most exceptional circumstances;

5. A private company engaged in marketing University-owned IP must operate entirely outside the University and use none of its facilities. Alternatively, it may make full payment at agreed commercial rates for those facilities through a contract with the University. It is a serious disciplinary offence to use University resources for private profit without such a contract being in place.

6. It is also a serious disciplinary offence to use paper displaying the University logo or other resources so as to imply that the University has endorsed the activities of any company set up by a member of staff. This may also constitute infringement of registered trademarks owned by the University, for which the University will seek legal remedies.
7. Where a company set up by a member of staff obtains external funding to carry out research within the University, then the conflict of interest must be declared and managed accordingly by the member of staff. The research will be carried out according to the University's normal contractual conditions for research, including overhead recovery rates, and the agreement will stipulate the charges made for access to university equipment and services. Such charges will be agreed by the appropriate Head of School/Section (or, where (s)he is involved in the company, the Vice-Principal/Secretary of the University) and TRS in accordance the current Research Proposal Costing (RPC) form. These charges must be set such that there is no public subsidy of the company. In addition, for the avoidance of doubt, the agreement will specify the ownership of any IP generated as a result of the Company's activities.

Such requirements above are in addition to those obligations of University staff as employees of the University as summarised in Appendix A of this document.

To summarise, there are many situations and issues that arise in connection with directorships of Companies, and neither the advice nor instruction given above, nor the information given in the Appendices, is intended to cover every possible situation. Specific issues not resolvable within the framework described in this document should be referred for more expert opinion prior to the undertaking of any commitment. Members of Technology & Research Services are able to give only limited advice to members of academic staff on the duties of directors, but may refer staff to specialised legal advisors, in which case the advice must be paid for by that member of staff. Research must not be undertaken in the University until an appropriate agreement is in place. Under no circumstances will any company employ its own staff in the University without the express agreement of the Head of School or Section, and without a contract in place governing the same.
APPENDIX D – Responsibilities and Duties of Directors

This annex summarises the main responsibilities and duties of a director; it is intended to act as an aide mémoire and should not be construed as having legal force. On first appointment as a director, or if a particular situation or matter arises and needs to be addressed, it is strongly recommended that more detailed guidance or advice is obtained.

A director’s main general duties are derived from case law, but these have now been codified in the Companies Act 2006. A wide range of statutes, such as the Insolvency Act 1986, impose additional duties on directors.

The seven general duties applicable to directors under the Companies Act 2006 are:

a) to act in accordance with the company’s constitution;
b) to promote the success of the company for the benefit of its members as a whole;
c) to demonstrate independent judgment;
d) to exercise reasonable skill, care and diligence;
e) to avoid conflicts of interest;
f) not to accept any benefit from a third party (unless it could not reasonably be regarded as likely to give rise to a conflict of interest); and
g) to declare interests in a proposed transaction or arrangement with the company.

If a director has an actual or potential conflict of interest, a breach of the general duty referred to in e) above can be avoided if the relevant situation or matter is authorised by the non-conflicted directors in accordance with the 2006 Act and the company’s articles of association.

Conflicts of interest can be a particular issue for a director who is nominated to the board by a particular shareholder or other stakeholder to represent and/or protect the interests of the person who appointed him (for example, the University). His natural instinct may be simply to represent the interests of his appointer. But he is considered in law to be the same as any other director on the board and to have the same duties as those other directors. In particular, he must act to promote the success of the company in the interests of the members as a whole. In order to avoid a breach of duty, therefore, the director may have to ignore the interests and wishes of his appointer when acting as a director.

Where directors enter into transactions with their companies or holding companies, this may, in certain cases, require shareholder approval because of the potential conflict of interest. The main transactions requiring approval under the Companies Act 2006 are where the company enters into a long-term service contract or a substantial property transaction, makes certain payments to a director for loss of office or grants a loan to one of its directors.

It is the directors’ duty to ensure that annual accounts are prepared in accordance with the Companies Act 2006. The detailed preparation work may be delegated to others. The directors retain overall responsibility for ensuring that those annual accounts give a true and fair view of the company’s financial position, and so must be satisfied with the methods and presentation adopted. They are also responsible for approving the accounts for issue to the shareholders.

Directors have important duties under the Insolvency Act 1986 when their company is in financial difficulties and the possibility of insolvency arises. There comes a point in the deterioration of the company’s financial position where the interests of shareholders become...
secondary to the interests of creditors. Directors need to be particularly aware of the risk of liability for wrongful trading. Wrongful trading is, in simple terms, continuing to trade when there is no reasonable prospect that a company will avoid insolvent liquidation. A director guilty of wrongful trading can be held liable to make a contribution to the company’s assets at the discretion of the court.

The Department for Business, Innovation and Skills has given the following useful overview of directors’ duties:

1. act in the company’s best interests, taking everything you think relevant into account;
2. obey the company’s constitution and decisions taken under it;
3. be honest, and remember that the company’s property belongs to it and not to you or to its shareholders;
4. be diligent, careful and well-informed about the company’s affairs. If you have any special skills or experience, use them;
5. make sure the company keeps records of your decisions;
6. remember that you remain responsible for the work you give to others;
7. avoid situations where your interests conflict with those of the company. When in doubt, disclose potential conflicts quickly; and
8. Seek external advice where necessary, particularly if the company is in financial difficulty.
APPENDIX E - Categorisation and Examples of Possible Conflict Situations

The following classification is reproduced from guidelines issued by the University of Glasgow and adopted from the University of Colorado, and usefully sets out a potential range of conflict situations. Activities and situations that could present conflicts of interest or commitment can be divided into three categories:

A. Activities that ordinarily are permissible;
B. Activities that appear to present potential conflicts of interest or commitment;
C. Activities that clearly present such serious problems as to be incompatible with University policies.

The separation into categories is imperfect and the following list of examples is not exhaustive.

A. Activities that ordinarily are permissible include:
   i) Participation in scientific or professional association activities, editorial responsibilities, or service on scientific review boards and panels.
   ii) Acceptance of honoraria for commissioned papers and occasional lectures.
   iii) Performance of professionally-related activities such as consulting, textbook authorship, involvement with professional societies, participation on review panels, etc.
   iv) Service as a consultant to outside organisations, provided the arrangement does not unreasonably restrict publication of research results obtained within the University.
   v) Service on boards and committees of organisations, public or private, that does not distract unduly from University obligations.
   vi) Performance of duties that are specified under approved agreements.

B. Activities that appear to present potential conflicts of interest or commitment:
   i) Relationships that might enable an employee to influence the University's dealings with an outside organisation in ways leading to personal gain or to improper advantage for anyone. For example, an employee could have a financial interest in an enterprise with which the University does business and be in a position to influence relevant business decisions. Ordinarily such problems may be resolved by full disclosure as well as making appropriate arrangements that clearly exclude that employee from participating in the decisions.
   ii) Situations in which the time or creative energy an employee devotes to extramural activities, including those listed in A, appears substantial enough to compromise the amount or quality of his or her participation in the instructional, scholarly, and administrative work of the University itself.
   iii) Activities (research projects, conferences, teaching programs, remunerative consulting agreements, etc.) for which employees are personally remunerated that involve, or might reasonably be perceived to involve, the University, its name, its laboratories, computers or other facilities and equipment.
   iv) Activities that violate or might reasonably be perceived to violate any of the principles governing research supported by funds administered through the University insofar as these principles are relevant to individual behaviour.

C. Activities that present such serious problems as to be incompatible with University policies:
   i) Situations in which the individual assumes responsibilities for an outside organisation that divert his or her attention from University duties, or create other conflicts of loyalty.
   ii) Use for personal profit of unpublished information emanating from University research or other confidential University sources, or assisting an outside organisation by giving it unreasonably exclusive access to such information or consulting under arrangements that impose obligations that conflict with University patent policy or with the University's obligations to research sponsors.
   iii) Circumstances in which research that could and ordinarily would be carried on within the University is conducted elsewhere to the disadvantage of the University and its legitimate interests.