Guidance for Departments in relation to Spinout Companies, including conflicts of interest

Introduction

This guidance document has been written by Research Services, Oxford University Innovation and Estates, with input from Legal Services, the University’s Conflict of Interest Committee and several Department Administrators. It follows requests for advice/guidance for departments, especially as the number and variety of spinout companies (and related ventures) is growing, and not only in the science divisions. Part 1 provides some background and context to these developments, before focussing in Part 2 on the main issues which arise for departments, and in particular those related to identifying and managing conflicts of interest.

1. Part 1. Spinouts at Oxford What is a spinout?

1.1. A spinout is a new venture created to exploit outcomes from research at the University, with University members as founders/shareholders and participation by the University as shareholder. It will usually (but not necessarily) be created with help from the University’s research commercialisation office, Oxford University Innovation (“OUI”).

1.2. A “Start Up” company, by contrast, is a new company formed by a University employee or student which is not based upon University intellectual property (including know how) (“IP”) and is often unrelated to the employee’s University employment. Examples of a Start Up might include a company formed through OUI’s software incubator; the establishment of a family brewing business by an academic; or a company designed as a vehicle to manage an individual’s consultancy activities which have been approved through the University’s outside appointments process.

1.3. The majority of spinouts have originated from research in MPLS and MSD. However, OUI also works with Humanities and Social Sciences to help set up new companies based on activities within these divisions. The companies formed from these divisions may well be established to commercialise research outputs such as copyright, software, data or database rather than patented technology.

1.4. It is worth noting that there are other companies that license IP from the University (via OUI) that are not spinouts, even if some may carry the name ‘Oxford’ or ‘Ox’ in their name. If in doubt OUI will readily check if a company is a spinout. Oxford has created, and has shares in, more than 100 spinout companies. All were created with support from OUI with the University shareholding managed by OUI’s Spinout Equity Management Team.

2. Why is guidance on spinouts relevant for Departments?

2.1. The number of new spinouts being formed by members of the University has grown markedly in recent years. This reflects an increasingly entrepreneurial culture in the University and a recognition of the benefits of encouraging this activity, consistent with the University’s Innovation Strategy. The creation in 2015 of Oxford Sciences Innovation (“OSI”), which has raised substantial funds to invest in companies from MSD and MPLS spun out from the University by OUI, has further catalysed the formation of spinouts. Hence individual departments are more likely to encounter such opportunities than ever before. In addition,
spinouts are often being formed at an earlier stage in the technology cycle than was the case historically, so are far more likely to fund further research at the University to support the development of the technology they have licensed via OUI or to generate new IP that could be seen to be core to the spinout’s future activities. This brief guide is intended to provide guidance to Heads of Department and senior Departmental Administrators around issues which may arise as a result of these activities.

3. **How do Departments benefit from spinouts?**

3.1. Where a company is successful in taking technology to market there can be substantial economic benefits for the University, which may include financial milestone payments and royalties from the sale of products and the sale of the equity which the University holds in the company. These are all shared with the Department(s) which hosted the University developers of the licensed technology in accordance with the relevant Regulation http://www.admin.ox.ac.uk/statutes/regulations/182-052.shtml. These returns depend on the success of the company and, if they do materialise, may only do so many years after the company’s formation.

3.2. Successfully spinning out technology, creating jobs and income for UK plc, is a priority for the Government and will provide potential impact statements for the REF and the funders of the research which led to the creation of the technology.

3.3. Research funded by the spinout companies should be funded at the level of at least 100% FEC (see below).

4. **What is the University’s relationship with OSI?**

4.1. Oxford Sciences Innovation is an independent investment company in which the University holds 5% of its equity (in time it is hoped that this will be worth a substantial sum). In return for this equity holding the University passes to OSI half of its founding equity in spinouts originating from MSD and MPLS. As is the case with any investor, OSI also receives equity in the spinouts if it invests in them. There is no compulsion for OSI to invest in a particular spinout, nor for any academic founders to seek or accept funding from OSI. The relationship with OSI in spinning out a company is managed by the University and OUI. Research contracts with the spinouts are negotiated, as usual, by the appropriate Research Services (“RS”) team. OSI will in general accept standard spinout and licence terms offered by the University and OUI.

4.2. Given the close relationship between the University and OSI, it is common to encounter members of the OSI teams meeting with researchers within departments. OUI encourages researchers to include OUI in early meetings with OSI in order to avoid confusion about roles and responsibilities.

4.3. The University and OUI have also collaborated with OSI on LAB282, a funding mechanism designed to support early stage drug discovery projects from University researchers, with the ultimate aim of forming new spinout companies to develop further.
5. **Issues for Departments to consider.**

Many of the issues which will arise are related to potential conflicts of interest. These, and the process for managing such conflicts, are addressed later in this document.

a) **Costing and pricing issues**

PRAC has resolved that research funded by industry should be costed at no less than 100% FEC. FEC is of course a shorthand – the clear intent is to recover at least 100% of the full costs. The University is not obligated to release its costings. Pricing strategy and market forces will enable researchers and departments to charge more than the actual cost.

OSI has agreed that spinout companies in which it has invested should pay 100% FEC for research which they fund. [NB, the companies will be independent of OSI, but in the majority of cases OSI will be the largest shareholder and have a seat on the company Board].

The price charged for the research which it hosts is at the discretion of the host Department and some Departments may seek more than 100% FEC. Because OSI has already agreed to pay 100% FEC, it should be unlikely that the Department will be asked to accept research sponsored by a spinout at less than 100% FEC.

Further information and advice on costing and pricing issues is available at [http://www.admin.ox.ac.uk/researchsupport/costing/](http://www.admin.ox.ac.uk/researchsupport/costing/)

Companies may also request Departments to perform **commercial services** for them. There is a clear distinction between *research* and *services*.

- **Research** is a charitable activity of the University: the design and outputs require intellectual input and are owned by the University and licensed for commercial purposes to the funding company and the University may, subject to certain restrictions, publish the results of the research. This protects the University and the career opportunities of those undertaking the research both through the ability to publish and because, should the company fail (and it is likely that many will), the intellectual property remains with the University. Such work should be scoped, priced and managed as research.

- **Services** work typically involves providing external clients with access to facilities or techniques that are already being provided to internal users. The outputs are owned by the funding company and there is usually no opportunity to publish the results. Services are a trading activity for the University, not a charitable one, and the University should seek to make a profit on such activities to apply to its charitable activities. OUI’s Consulting Services group (OUI-CS) are able to provide departments with support for such services. An advantage of routing work through OUI-CS is that, where appropriate, they can incorporate elements of consultancy (either departmental or personal) into the project, so adding value for both the department and the client. Personnel performing services work should not be seeking to pursue academic careers or, if they are, it should constitute only a small component of their work.

b) **Location and space issues**

Care should be taken about how and where the research funded by the company but undertaken by the University takes place. If the research overlaps with research funded by other
bodies, for example, how will ‘Chinese walls’ keep the research outputs separate? Should the research teams be physically segregated?

Embedding spinout company employed staff within a University research group should be resisted since it gives rise to a number of issues including: the perception of (or actual) “leakage” of IP; the possible creation of jointly owned IP which creates complications; difficulties over maintaining confidentiality; potential personnel issues when staff undertaking similar work are on significantly different employment contracts; use of academic IT networks, academic software licences and consumable suppliers where non-academic use is prohibited by the relevant licences or purchasing contracts; complications may also arise when hosting spin out employees or research funded by the spin out in newer buildings which were constructed without the payment of VAT. In general, the use of “visitors agreements” are not suitable for use with spinout employees other than for short visits.

In addition to these issues, there are numerous property and estates risks that can arise when spinout companies and/or their employees occupy space in University buildings. These include: statutory and legal requirements (including compliance with the University’s charitable objectives, University’s legislative powers, Landlord & Tenant Act 1954 rights, contractual requirements including the conditions of any grant funding, leasehold or title restrictions and state aid and insurance issues relating to the building), town planning requirements, adverse impact on business rates and VAT implications.

In light of these risks, a formal policy governing third party occupations, with which all departments must comply, has been approved by BESC and PRAC. The policy document can be found at Standing orders - 2. Space. This explains the risks in more detail and sets out the requirements for third party occupations, including expectations as to terms of occupation, the University governance procedures involved (which require approval by BESC, CSG and PRAC as well as the Director of Finance) and the need for appropriate legal documentation. It should be noted that the University is normally under an obligation to receive a market rent (and service charge) for any space occupied by third parties. Whilst departments will be expected to cover all of their service charge costs relating to the space occupied by a spinout, the general principle is that departments will not retain any ‘profit’ element from the rent over and above space charges, unless otherwise approved by BESC.

There is an information sheet, to be used in conjunction with the policy, which departments are required to complete at the outset and which needs to be counter-signed by their Head of Division. Early involvement of the Asset & Space Management (ASM) team in Estates, who will assist the departments through the process and liaise with the Legal Services team, is essential. ASM can be contacted by email: assetmanagement@admin.ox.ac.uk.

c) Conflicts of Interest

The formation of spinout companies and their funding of research in the laboratories of the academic founders of the companies gives rise to some of the most complex conflict of interest issues. Such issues need to be appreciated, declared and managed to protect the founding academics, their staff and the reputation of the University. The University’s conflict of interest policy and related advice can be found at https://researchsupport.admin.ox.ac.uk/governance/integrity/conflict/policy. A recent (2016) Internal Audit found that although the policy itself is acceptable, its implementation has been
inadequate and the Conflict of Interest Committee is looking at introducing measures to ensure that appropriate declarations and management plans are implemented and adhered to.

The Conflict of Interest Committee has resolved that declarations and management plans for all founding academics of spinout companies must be reviewed by Research Services and approved by the Head of the relevant Department or Division, as appropriate, **before completion of the initial investment round.**

The attached example Conflict of Interest (CoI) declaration and management plan has been generated to highlight some of the potential conflicts which may arise (or be perceived) and some suggestions on how they might be managed. These are not comprehensive and alternative arrangements might be more appropriate. Both RS and OUI are happy to discuss any concerns you have regarding potential Cols.

d) **Process for spinout company formation**

There is a defined process to establish a spinout company which typically comprises the following steps:

1. OUI and founding academic(s) agree that establishing a spinout company is a sensible way of exploiting some IP. A CEO designate may be identified early on to work with OUI and the researchers to develop a business case for investors.

2. Deal Sheet 1 is prepared, led by OUI. This sets out the proposed structure for a new Oxford spinout and exists to ensure that all interested parties have clarity on;
   a. the proposed equity split between researcher(s), University and any other founding shareholders (e.g. an incoming CEO);
   b. the nature of the proposed relationship of each academic founder and the spinout (e.g. consultant, non-exec director, PI for sponsored research);
   c. any conflicts of interest identified by the researchers

   This will be discussed with the Head of the relevant Department(s) and copied to the Departmental Administrator and the relevant RS team, with the HoD providing either signature or email confirmation that they are comfortable with what is proposed.

3. Discussions progress with potential investors and the founding academics, leading to the development of a Business Plan. Once an investor or group of investors is confirmed, the relevant legal contracts will be negotiated with OUI. OUI’s Licensing & Ventures Group will work with investors to negotiate a shareholders agreement and company articles of association, which are the core corporate documents setting out the details of the investment, the structure and the governance of the company. This group will also execute the spinout express licence (or licences) to the relevant IP. OUI’s Consulting Services group (OUI-CS) takes the lead in negotiating agreements under which the founder academics can consult to the spinout (note that the University requires all founder academic consultancies into a spinout in the first 12 months to be managed via OUI-CS). Founding academics who are consultants to their spinout are required to seek approval (through the OA1 system) from their head of department/division in the normal way, and additionally, in accordance with the CoI Policy, founder consultants must also seek approval from the Pro Vice Chancellor of Research. OUI-CS facilitates this as part of its consultancy management services. If the founding academics are to hold a directorship to the spinout, additional
approval for this is required through a separate OA1 application. Where the spinout wishes to sponsor research in the University, it may wish to finalise the associated contract(s) such that it (they) can be executed in parallel with the other agreements at the point of investment. Any agreed consultancy should be recorded on CORE by the Department. Sponsored research agreements are negotiated with RS.

4. Col declaration and management plan to be prepared by the founding academic(s), commented upon by RS and approved and retained by the relevant Heads of Department or Division. Copies of the completed Col declaration and management plan should be lodged with OUI, RS and all the relevant people identified in the Col management plan.

5. Deal Sheet 2 is completed (led by OUI) detailing the final terms for spinning out the company, including the proposed details of the incoming investment and investors. This also provides an opportunity to update any of the Deal Sheet 1 details which have changed. It is signed by OUI representatives, the researchers, the relevant Head(s) of Department and the University’s Finance Director.

6. The timing of the various parties receiving their shares is carefully managed on a case-by-case basis in order to optimise the tax treatment for the parties. All parties involved in the spinout need to obtain their own tax advice. The investment into the company occurs in parallel with execution of the other agreements described above, subject to the relevant approvals having been received.

Key points of contact:

<table>
<thead>
<tr>
<th>Issue</th>
<th>Point of contact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spinout Deal Sheet 1</td>
<td>OUI Licensing &amp; Ventures project lead</td>
</tr>
<tr>
<td>Spinout Deal Sheet 2</td>
<td>OUI Licensing &amp; Ventures project lead</td>
</tr>
<tr>
<td>Consultancy</td>
<td>OUI Consulting Services project lead</td>
</tr>
<tr>
<td>Sponsored Research Agreement</td>
<td>Research Services</td>
</tr>
<tr>
<td>Conflict of Interests</td>
<td>Research Services</td>
</tr>
</tbody>
</table>

There should be no expectation for departmental administration staff to be involved as part of their university post in the setting up and business planning of the spin out.
Sample Conflict of Interest declaration and management plan

This has been generated to highlight issues which commonly arise when spinout companies sponsor research in the founding academic’s laboratory and to propose some potential management solutions. This should be read in conjunction with the starred notes at the end of the document and the University’s policy and procedures on Conflicts of Interest https://researchsupport.admin.ox.ac.uk/governance/integrity/conflict/policy

Name: Prof G Waite

Department: Pyrotechnics

Date:

Declaration of actual or perceived conflicts of interest:

I have been working within the University for ten years on improved combustibles for the manufacture of environmentally friendly, smoke-free fireworks. This work has led me to develop novel IP which has been protected through Oxford University Innovation (OUI) and which is intended to be licensed into a spinout company (PyrOx), which aims to further develop the IP for a variety of applications. I am the sole academic shareholder in PyrOx and intend to act both as a consultant to the company and as a non-executive director. For the foreseeable future PyrOx intends to support research in my lab providing any novel IP is licensed into the company. I will continue to undertake research funded by the NERC and supervise DPhil students. The following are the conflicts of interest which I have identified may arise from this situation together with the mechanisms I propose for their management.

1. As a shareholder in PyrOx I stand to gain financially should the company be successful. I shall be directing the research in my laboratory which will be undertaken by post-docs and students who may be concerned that I will not give due credit to their inputs should the research benefit the company. I will declare this conflict to all current and future researchers in my group and ensure that any new IP developed is handled through Research Services and OUI in the normal way so that all contributors to the development of the IP are rewarded in accordance with the University’s Statutes and Regulations. For new IP generated under the anticipated sponsored research agreement and which will be covered by the initial licence into the company for no additional financial consideration, there will be appropriate revision of the royalty payment distribution as directed by Research Services to ensure that new inventors receive a share of the financial benefits to the University arising from the exploitation of IP which they have developed.

2. PyrOx will be supporting research in my laboratory alongside my research funded by third parties. There may be concerns that I arrange for PyrOx to have preferential terms, or ask staff employed on third party grants to undertake work for PyrOx, or that results funded by the third parties may “leak” to PyrOx for its benefit. The research to be supported by PyrOx will be detailed in writing such that there is no overlap with the research supported by third parties. This will be checked by the Head of Department. The budget for this research will be determined by the Departmental Administrator and priced at minimum 100% FEC. The contracts will be negotiated between Research Services and other company personnel. I shall take no
part in the negotiations and the Head of Department will appoint an academic lead to work with Research Services.

3. My position as a non-executive director in PyrOx leads to a conflict of interest as I am legally bound to act in the best interests of the company while being an employee of the University. In addition to the other actions listed here, I will manage this contractually by ensuring my significant obligations to the University are declared to the Board of PyrOx. In particular, I shall not undertake or supervise research within the University under my directorship position.

4. The research sponsored by PyrOx may result in the creation of novel IP. However, not all IP is protectable and PyrOx might have a commercial advantage if such IP was not disclosed or if its disclosure was delayed. As a result, there is a potential conflict of interest between encouraging academic publication and maximizing the potential of the company. This will be managed through the Head of Department appointing co-supervisors for my students and post-docs whose task will be to ensure that the results of their research are appropriately published in a timely manner. The students and post-docs will also be able to raise with the co-supervisor any concerns which they may have arising from the handling of IP.

5. Two of my postdocs (Drs X and Y) have significant scientific expertise of relevance to PyrOx and wish to undertake consultancy work for PyrOx. As a result there is a potential CoI between their research work in my laboratory and their consulting activities for PyrOx. This will be managed by both postdocs completing and signing OA1 forms and by ensuring that there is no overlap between the scope of the consultancy work and their routine academic research work.

6. On all grant applications to third parties and publication of results related to the activities of PyrOx I will declare my conflict of interest and, when appropriate, provide a copy of this declaration and management plan.

7. Other, unforeseen, conflicts may arise from time to time. I will try to be alert to these, but in such cases, or should issues arise in which a junior member of staff or student feel that this management plan has not been adhered to, the Head of Department has indicated that they would be happy to discuss and address such issues as appropriate.

8. I will review the operation and content of this declaration and management plan with my Head of Department on an annual basis.

9. In order to ensure full disclosure, a copy of this declaration and management plan will be provided by the Departmental Administrator to all members of my research group and to all potential members to whom a position is being offered. **

Signed: Prof Waite
Date:

Signed in agreement: Head of Department ****
Date:
* The same issues may arise with clinical research but, in addition, the PI will need to consider declarations to ethics committees and regulatory bodies (including financial declaration to the FDA) and the potential conflict of preferential recruitment into the company’s trial over others which may be seeking access to the same patient cohort.

**Confidentiality may be an additional issue in these circumstances in which case physical separation of groups might be considered.

*** Where the research is in collaboration with other academic groups within the University or third parties, the declaration should also be provided to them.

**** Where the Head of Department is declaring a conflict, the declaration and management plan should be agreed with the Head of Division.

Table 1: Examples of the different activities of an academic who is both PI, NXD and consultant

<table>
<thead>
<tr>
<th>PI</th>
<th>Non-Executive Director</th>
<th>Consultant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Create detailed research plans, including schedules, resources and costing elements</td>
<td>Help develop/challenge company strategy</td>
<td>Provide general technical advice and expertise; train staff on the technology; attend technical review meetings</td>
</tr>
<tr>
<td>Direct the research project, undertake research and supervise research staff at the University</td>
<td>Monitor company performance</td>
<td>Advise on product development planning and technical strategies; how the Licensed Technology will be turned into a product</td>
</tr>
<tr>
<td>Report results to the research sponsor, identifying new IPR</td>
<td>Ensure integrity of financial information and sufficiency of risk management systems</td>
<td>Identify and define technical problems that may need addressing, either through sponsored research or through other strategies such as in-licensing 3rd party IPR, accessing technical services, or other consultancy advice</td>
</tr>
<tr>
<td>Liaison with sponsor over potential publications</td>
<td>Set remuneration levels of the executive directors (EDs), support hiring and firing of EDs, and succession planning</td>
<td>Advise on how the technology can be made more robust, fit for manufacture, GMP process requirements</td>
</tr>
<tr>
<td>Attend Board meetings</td>
<td></td>
<td></td>
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