# Guidance for Departments in relation to Spinout Companies

## Introduction

This guidance document has been written by Research Services, Oxford University Innovation and Estates Services, with input from Legal Services, the University’s Conflict of Interest Committee and several Heads of Administration & Finance. 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 A provides some background and context to these developments, before focussing in Part B on the main issues which arise for departments, and in particular those related to identifying and managing conflicts of interest.

# PART A: SpINOUTS AT OXFORD

## 1. 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. Spinouts are created with help from the University’s technology transfer company, 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 startup 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 Historically, the majority of spinouts have originated from research in MPLS and MSD. However, OUI increasingly 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 Spinouts and Start Ups may be commercial ventures operated for profit and shareholder return, or may be formed using one of the social venture legal structures, such as ‘Company Limited by Guarantee’ (CLG), in which business methods are used to produce profit which is to be used for the social purpose of the CLG. Similar considerations may also apply if the individual forms a new charity.

1.5 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 300 spinout companies. All were created with support from OUI with the University shareholding managed by OUI’s Investments and New Ventures Team.

1.6 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 Science Enterprises (**“OSE”**), which has raised substantial funds (>£850m at the end of 2022) 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. This brief guide is intended to provide guidance to Heads of Department and Heads of Administration & Finance around issues which may arise as a result of these activities.

## 2. How do Departments benefit from spinouts?

2.1 Creating a spinout is one of several routes through which researchers, departments and the University can maximise the application of their research for societal, economic and public benefit. Seeing their research change the world for the better is a primary motivation for many researchers and is central to the University’s mission. Demonstrating success in realising impact from research is important in securing external funding for research, whist impact through spinouts have made compelling impact case studies in REF exercises (in turn generating QR income for departments).

2.2 Where a company is successful in taking technology to market there can be significant 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>. Economic benefits to the central University are attributed to the Strategic Research Fund and Strategic Innovation Fund, to which Departments can apply for support.

2.3 It is worth noting, of course, that scale of direct financial returns from spinouts to the University and Department(s) depend on the commercial success of the company and, where these do materialise, may only do so many years after the company’s formation and on timing which is not in the control of OUI or the University.

2.4 In addition to the financial benefits to Departments from the University’s equity stake and royalty income, OSE has offered two mechanisms for financial benefits to departments:

a) OSE will gift 2% of its founder equity to departments (ie OSE’s share of the University’s founder equity received under the partnership framework. This does not apply to any proceeds from equity investment made by OSE);

b) OSE has offered a mechanism to provide an earlier return to Departments from the equity held by the University. On a funding round for the company, OSE would ‘buy out’ some of the University shares from which eventual financial return would be received by the Department. Shares sold during a funding round cannot be sold again in a later transaction ie this is a question of timing and risk vs reward. If you are interested in this you should speak to the Division and to OUI.

2.5. A further and common benefit to researchers and Department(s) comes in the form of funded research projects that spinouts will often enter into with the University to further develop technology and research areas related to IP that is being commercialised by the spinout. In financial terms, this will provide research funding priced in line with the University’s business funded rates (i.e. 100-140% FEC), with such income also driving further financial returns to Department(s) through Business QR.

## 3. What is the University’s relationship with OSE?

3.1 OSE 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 OSE half of its founding equity in spinouts originating from MSD and MPLS[[1]](#footnote-1). As is the case with any investor, OSE also receives equity in the spinouts if it invests in them. OSE is the University's preferred investment partner but there is no compulsion for OSE to invest in a particular spinout, nor for any academic founders to seek or accept funding from OSE. The relationship with OSE 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. OSE will in general accept standard spinout and licence terms offered by the University and OUI.

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

3.3 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.

# PART B: 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.

## 4. Costing and pricing issues

4.1 The University’s Planning & Resource Allocation Committee (PRAC) has resolved that research funded by industry should be priced at no less than 100% FEC (i.e. the funding should as a minimum cover the full cost of the research) and that in many instances it is appropriate to price at a higher rate (e.g. 120% or 140% FEC). This is because in many circumstances the industry funder is not just funding the research project but under the terms of the associated research contract is being granted varying degrees of commercial access and use to the results of the project. The University’s Research & Innovation Committee has approved the adoption of three new [contracting models for industry-funded research](https://researchsupport.admin.ox.ac.uk/contracting-with-business-models) that reflect a balanced approach between the context of the research project, the appropriate terms and the price charged.

4.2 The University’s standard approaches to pricing industry-funded contracts should apply equally when working with spinouts. Further information and advice is available on [costing and pricing research with industrial funders](https://researchsupport.admin.ox.ac.uk/costing-pricing/pricing/industry/) and Research Services will lead on the negotiation of contractual terms in the usual way.

4.3 In addition to funding research, companies (including spinouts) 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 to commercialise, cease trading etc 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.

## 5. Location and space issues

5.1 Care should be taken about how and where the research funded by the company and 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?

5.2 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 terms and conditions; 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 spinout employees or research funded by the spinout 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.

5.3 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.

5.4 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](https://unioxfordnexus.sharepoint.com/sites/ADMN-UASMosaicDocumentHub/Estates/Forms/AllItems.aspx?id=%2Fsites%2FADMN%2DUASMosaicDocumentHub%2FEstates%2FPolicy%5Ffor%5FThird%5FParty%5FOccupation%5Fof%5FFunctional%5FSpace%2E%5FApproved%2E13%5F10%5F2016%2Epdf&parent=%2Fsites%2FADMN%2DUASMosaicDocumentHub%2FEstates) can be found at [Standing orders - 2. Space](https://estates.admin.ox.ac.uk/standing-orders#tab-1148636) . 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 University’s Chief Financial Officer) 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.

5.5 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.

## 6. Conflicts of Interest

6.1 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 more 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. Detailed guidance and procedures for managing conflicts of interest connected to spinout companies can be found on the [University’s Conflict of Interest pages](https://researchsupport.admin.ox.ac.uk/governance/integrity/conflict). Resources on the page include Conflict of Interest guidance for departments and guidance on managing responsibilities and interests for University employees who are forming or joining a company

6.2 The University’s Conflict of Interest Committee has resolved that conflict of interest 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.***If the company is to be formed without investment then the plans should be in place before the company starts operations or before any work begins under the outside appointments.

6.3 The example Conflict of Interest (CoI) declaration and management plan (see **Annex A**) 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 CoIs.

## 7. Process for spinout company formation

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

(i) 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.

(ii) 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;

1. the proposed equity split between researcher(s), University and any other founding shareholders (e.g. an incoming CEO);
2. the nature of the proposed relationship of each academic founder and the spinout (e.g. consultant, non-exec director, PI for sponsored research);
3. any conflicts of interest identified by the researchers

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

7.3 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.

7.4 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). The department receives the 10% management fee in the first year. Founding academics who are consultants to their spinout are required to seek approval (through the OA1 procedure) from their head of department/division in the normal way. OUI-CS facilitates this as part of its consultancy management services. If the founding academics are to hold a directorship to the spinout, approval for this is also required through the OA1 application.

7.5 CoI 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 CoI declaration and management plan should be lodged with OUI, RS and all the relevant people identified in the CoI management plan. Any agreed outside appointments should be recorded on PeopleXD by the Department. It is recommended that CoI management plans should be reviewed on a regular basis, e.g. annually, or if things change.

7.6 Where the spinout wishes to fund 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. Research agreements are negotiated and executed by RS.

7.7 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 OUI’s Head of Investments and New Ventures, who holds delegated authority for the University’s shareholdings from the University’s Finance Director.

7.8 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:

|  |  |
| --- | --- |
| **Issue** | **Point of contact** |
| Spinout Deal Sheet 1 | OUI Licensing & Ventures project lead |
| Spinout Deal Sheet 2 | OUI Licensing & Ventures project lead |
| Consultancy | OUI Consulting Services project lead |
| Research Agreement | Research Services |
| Conflict of Interest management plan | Research Services |

7.9 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.

Date of last review: May 2023

**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*](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/is going 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 fund research projects in my lab with any new IP arising from the funded projects being 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. I will ensure that all contributors to the development of the IP are properly identified and rewarded in accordance with the University’s Statutes and Regulations and that the discussions about this are managed inclusively, fairly and openly. For new IP generated under the anticipated research funded agreement with PyrOx and which will be covered by the existing 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 contributing researchers 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 and approved by the Head of Department. \*\* The research funding agreement between the University and PyrOx 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 independent member of the department to act as Research Services’ point of contact within the department during the negotiations. The price charged in any funding or other agreement with PyrOx will be set by the Head of Administration and/or Head of Department in consultation with Research Services in accordance with the University standard approaches to industry pricing. I will play no role in that determination.
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 and ensuring that my appointment letter with PyrOx acknowledges my responsibilities as an employee of the University. In particular, I shall not undertake or supervise research within the University under my directorship position. Other than in connection with PyrOx-funded work, I shall not provide unpublished research information to PyrOx.
4. The research sponsored by PyrOx may result in the creation of new IP. However, not all IP is protectable by patenting and PyrOx might have a commercial advantage if valuable results and know-how is kept confidential (i.e. not published) or if publication was significantly delayed. As a result, there is a potential conflict of interest between encouraging academic publication and maximising the potential of the company. This will be managed through the Head of Department appointing co-supervisors in the department who are unconnected to PyrOx for my students and post-docs. These co-supervisors will ensure that the results of the students and post-docs research are appropriately published in a timely manner. The students and post-docs will also be able to raise with their co-supervisor any concerns which they may have arising from the handling of IP, publications or other matters connected to their research and work in my lab.
5. Two of my postdocs (Drs X and Y) have significant scientific expertise of relevance to PyrOx and wish to undertake paid consultancy work for PyrOx. As a result there is a potential conflict between their research work in my laboratory and their consulting activities for PyrOx. Both postdocs will complete OA1 forms to include their own conflict of interest declared, and submit this for approval by the Head of Department. The consultancy contract will be managed by OUI Consulting Services who will work with the postdocs to ensure that there is no overlap between the scope of the consultancy work and their routine academic research work in the University.
6. On all grant applications to third parties and publication of results related to the activities of PyrOx I will declare my activities and relationship with PyrOx 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. This conflict of interest management plan will be included with my OA1 form in which I will seek approval to hold this appointment with PyrOx from my Head of Department.
9. I will review the operation and content of this declaration and management plan with my Head of Department on an annual basis, as part of my annual renewal of approval to hold the outside appointment with PyrOx through the OA1 form.
10. In order to ensure full disclosure, a copy of this declaration and management plan will be provided by the Head of Administration & Finance to all members of my research group and to all potential members to whom a position is being offered. \*\*\*

Signed: Prof Waite Signed in agreement: Head of Department \*\*\*\*

Date: Date:

\* The same issues may arise with clinical research but, in addition, the researcher will need to consider declarations to ethics committees, study participants 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.

1. Under the [University’s Founding Equity Policy](https://researchsupport.admin.ox.ac.uk/innovation/ip/equity), 80% of founding equity in spinout companies is allocated to founder researchers and 20% to the University in nearly all cases. This means that from spinouts from MSD and MPLS, 10% of the founding equity is allocated to the University and 10% to OSE. [↑](#footnote-ref-1)