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Human Resources Policy Statement HRPS35

CONFLICT OF INTEREST AND COMMITMENT POLICY

1. Policy Statement

Middlesex University is concerned about actual and potential conflicts of interest and conflicts of commitment for the following reasons:

- As a body governed by public law, the University must comply with the Principles set out by the Committee on Standards in public life;
- Where conflicts of interest and commitment are not effectively managed, they may jeopardise the University's mission or good name;
- The University wishes to encourage many kinds of commercial activity including consultancy, commercial research, and the development of intellectual property. Careful management of these activities is required to avoid any potential conflicts between the University's interests and the legitimate personal interests of staff;
- The University must make effective use of public funds in all its activities including those of contracting for goods and services.

This Policy accords with the Principles of Public Life set out by the Committee on Standards in Public Life, and similar policies have been adopted in many universities and public bodies.

Middlesex University requires that existing and potential conflicts of interest¹ must be declared, that action be taken where there is an actual conflict of interest, or where there may be a perception of such conflict, and that these actions will be fair, open, accountable, and properly documented while respecting the confidentiality of the information disclosed as far as this is possible.

2. Principles

- 2.1** In conformity with the seven Principles of Public Life identified by the Committee on Standards in Public Life, the University has a responsibility to ensure that its official

¹ The term 'conflict of interest' is used throughout but the document (as per the title) covers both conflict of interest and conflict of commitment.

activities and those of its staff conform to acceptable standards of integrity, and good administrative conduct.

2.2 Every staff member has an obligation to act in the best interests of the University in respect of their University duties, activities, and employment.

2.3 The University's obligations to its staff are:

- not to interfere in their private concerns where these have no bearing on the legitimate interests of the University.
- to deal with issues raised under this Policy in a prompt, fair, reasonable, and objective manner, paying due attention to the effects of any decisions and actions on a staff member's work, career, and reputation.

2.4 The three actions that underpin these principles are:

- to *disclose* actual, or perceived, or potential conflicts of interest;
- to *manage* the conflict where appropriate;
- to *prohibit* any activity where necessary to protect the interests of the University or the public interest.

The purpose of this document is to:

- assist staff in identifying conflicts of interest;
- outline the University's system for disclosure of conflicts of interest,
- provide guidance for managers dealing with conflicts of interest; and
- assist in the resolution of conflicts of interest

3. Definitions

3.1 Conflict of Interest

The term *conflict of interest* refers to situations in which financial or other personal considerations may compromise, or have the appearance of compromising, a staff member's professional judgment in research, teaching, management, administration, or other professional activities.

Conflicts of interest have the potential to bias directly or indirectly many activities or aspects of the University's endeavour. This is especially so when staff members are in a position to set University policies, manage contracts, select equipment and supplies, involve students in sponsored research projects, or when they have managerial and administrative roles for which objectivity and integrity are paramount.

The appearance of a conflict of interest may be as serious and potentially damaging as an actual conflict. Reports of conflicts based on appearances can undermine public trust in ways that may not be adequately restored even when the mitigating facts of a

situation are made known. Apparent conflicts, therefore, have to be evaluated and managed in the same way as known conflicts.

3.2 Conflict of Commitment

The term *conflict of commitment* refers to an individual staff member's distribution of effort between employment obligations to the University and his/her commitment to "outside" professional activities generally encouraged by the University such as consulting, authorship, involvement with professional societies, participation on review panels and other such like activities.

A conflict of commitment arises when professional service or external research, consultancy, or other external activities interfere with the paramount obligations to students, colleagues and the primary missions of the University. Conflicts of commitment primarily involve questions of obligation and effort, but are often tied to financial remuneration or other inducements and, in such cases, may also constitute conflicts of interest.

- 3.3** Conflicts of interest and conflicts of commitment may depend on the situation, and not necessarily on the character or actions of an individual. The issue is whether an independent observer may reasonably question the factors that affected a decision or action and not whether they have in fact affected the decision or action. The policy focus, therefore, is whether the particular interests or circumstances of the staff member are likely to compromise, or to be perceived as compromising, the staff member's ability to carry out his/her duties impartially.

4. Potential Areas of Conflict

Conflicts can arise from commercial interests², ethical or religious views or personal relationships³. The most common are those arising from commercial interests and close personal relationships. The existence of an actual, perceived or potential conflict of interest does not necessarily imply wrongdoing on the part of anyone. However, any private, personal, or commercial interests which give rise to such a conflict of interest must be recognised, disclosed appropriately, and either eliminated or managed.

Further guidance is provided in the Appendix which gives a list of activities in which staff often engage, classifying them into A: activities that are ordinarily permissible; B: activities that appear to present potential conflicts of interest or commitment; and C: activities that are normally incompatible with University policies.

In respect of specific issues, staff should consult the relevant sections of the Financial Regulations, the Assessment Regulations, and University Policy documents covering Equality and Diversity (HRPS 8), Relationships with Students (HRPS 30), Public Interest Disclosure (HRPS 21).

² Including also business and financial interests

³ including but not limited to family relationships, sexual/romantic relationships, and relationships between members of an organisation not open to the public having commitments of allegiance, and internal rules of conduct.

Research

Researchers have an obligation to disclose any affiliation with, or financial involvement in, any organisation or entity with a direct interest in the subject matter of the research or in the provision of materials for it. A conflict of interest may also arise if any organisation or entity with a direct interest in the subject matter provides direct benefits to the researchers such as sponsorship of the investigation, or indirect benefits to the researchers such as the provision of materials or facilities, or support of the researchers such as provision of travel or accommodation expenses to attend conferences.

In respect of research funding, there is an obligation to disclose to the funding body any actual or potential conflicts of interest which might affect the research or investigations, influence publication, or otherwise affect the project. Likewise, in respect of publication, conflicts of interest must be disclosed to publishers, or editors, and to readers of the published work.

Contracts and Agreements

Staff have an obligation to disclose in writing to a responsible person associated with the contract or agreement that they believe that a conflict of interest does or could exist in respect of their involvement in the contract or agreement. If a staff member who is negotiating an agreement on behalf of the University has an interest such that it could appear to a reasonable observer that negotiations are biased, the staff member should disclose that interest.

Management and Supervisory Roles

Staff members who hold a line management or supervisory role have an obligation to make a disclosure in all cases where they find themselves involved in:

- (a) the recruitment, selection, or appointment of an applicant; or
- (b) the appraisal, promotion, discipline, or other management activity of a staff member; or
- (c) the authorisation of any financial payments (e.g. timesheets, expenses claims, salary changes) for a staff member

with whom they have a personal relationship, or who is known to them privately through their commercial interest, or whose known religious/ethical views or strong personal values may be perceived to be in conflict with their own.

Disclosure must be made in all cases except where there has been pre-authorisation by the Executive line director.

Disclosure of Other Employment

In specific cases, there may be benefits to both staff and the University for staff to hold other part-time employment simultaneously with their University employment. However, there also

exists a potential for a perceived or real conflict of interest or commitment where more than one employment relationship exists at any particular time.

In accordance with staff contracts, staff should disclose their intention to hold other employment concurrently with their University employment, and they should seek formal University approval for such arrangements in accordance with the exclusivity clauses in the Academic Staff Handbook, the Research Staff Handbook, and the Senior Managers and Professors Handbook.

Outside Activities or Earnings

In undertaking any outside activities or earnings, staff must abide by the terms of their contract of employment. Where a member of the non-academic staff is engaged in outside earning activities, they must advise their line manager of any potential conflict of interest or any perception of a conflict of interest with their obligations to the University.

Examples of conflicts of interest include:

- having a financial interest in an organisation with which the University is involved, or is considering involvement, in respect of grants, agreements, sponsoring, or licencing;
- providing advice to students, other staff, or the University, which is not independent of personal commercial, and other interests;
- otherwise allowing outside considerations to affect actions or decisions that are part of their responsibilities to the University.

Particular issues can arise when staff are also Directors of companies, or involved in Partnerships. This is because company Directors must act in the best interests of the company and a conflict would exist if such actions are contrary to the interests of the University ⁴.

Receipt of Gifts

It is not acceptable for a staff member to give or receive a gift, favour, or benefit, that may: compromise his/her judgment or have the appearance of so doing; create a conflict of interest; damage relationships with others; or indicate any favouritism or prejudice towards a person or group of people. Staff should consider the cultural context in which the gift, favour, or benefit was offered, and endeavour to avoid giving offence. Staff should read the section entitled 'Giving and Receiving Gifts including Hospitality' in the University's Financial Regulations.

Use of Official Facilities and Equipment

Staff members are expected to use all facilities and equipment efficiently and effectively. Official facilities and equipment should only be used for private purposes when official permission has been given in advance.

⁴ See the Companies Act 2006, especially sections 174 and 175. These sections clarify the duties of a Director of a company (in particular, the standard of care owed by a Director to his/her company) and the duty to avoid conflicts of interest, based upon the fiduciary duty which a Director owes his/her company.

Personal Beliefs

Staff should take care to ensure that their political involvement, or religious or other personal beliefs do not bring them into conflict with their duties as staff members of the University. It is recognised that a conflict of interest can arise when staff are required to implement a University policy which is at variance with the strong personal values of an individual. (See also Equality and Diversity Policy)

Public Comment

Public comment includes public speaking engagements, comments to the media, letters to the media, books, journal articles, notices, and use of electronic communications such as email and the Internet.

It is recognised that staff may at times want to express unpopular views on sensitive subjects such as religion, beliefs, ways of life, and they may feel strongly the need to challenge received wisdom. Academic freedom is one aspect of freedom of expression and this is a qualified, not an absolute right. It may be subject to conditions and restrictions including such conditions and restrictions as are 'prescribed by law' or are 'necessary in a democratic society', or to 'protect the reputation or rights of others'.⁵

The University expects staff members to exercise their academic freedom responsibly and at times with restraint⁶ to ensure that their own names and that of the University are not brought into disrepute. It is not possible to lay down clear-cut rules as to what constitutes a responsible use of academic freedom. Each case and its context will be different but staff should bear in mind the weight that is likely to be attached to views they express by reason of their recognised intellectual and social standing, the fact that controversial views expressed in academic journals and lectures are less likely to cause upset than the same views expressed to a wider audience, and the potential need to limit any ensuing damage. It is good practice to get advice and comment from colleagues and managers before making public comment on sensitive topics.

Use of Official Information

Staff members are expected to maintain confidentiality, and security for all official information for which they are responsible. However, the University is subject to the Freedom of Information Act under which it can be required to give members of the public, on written request, access to information. Staff should refer requests for information from persons not normally authorised to have such access to the FOI Contact for their School or Service.

5. Assessing Conflicts of Interest and Conflicts of Commitment

Reviewers (the staff member to whom a disclosure has been made and who are required to assess whether or not a potential or actual conflict of interest or commitment exists (see **6.2** below)) must determine the permissibility of various activities, and assess the degree to which disclosed activities may pose a risk to the staff member, the University, and other

⁵ The European Convention on Human Rights, Article 10 – Freedom of Expression. Incorporated into the Human Rights Act 1998.

⁶ The ECHR Article 10 states that freedom of expression carries with it duties, and requires that it be exercised with responsibility.

organisations which may be affected. Below is a suggested list of questions for use in evaluating potential conflicts of interest or commitment.⁷ The list is not exhaustive and other questions related to special circumstances can be added, as appropriate.

1. Has all relevant information concerning the staff member's activities been disclosed?
2. Do the relevant staff member's financial interests suggest the potential for conflicts or the appearance of conflicts or bias?
3. Do the staff member's reported external time commitments exceed permissible (or reasonable) levels?
4. Is there any indication that the staff member in his/her professional role has improperly favoured any outside body or appears to have had incentive to do so?
5. Has the staff member inappropriately represented the University to outside bodies?
6. Does the staff member appear to be subject to incentives that might lead to conflicts or bias?
7. Is there any indication that obligations to the University are not being met?
8. Is the staff member involved in a situation that might raise questions of bias, inappropriate use of University assets, or other impropriety?
9. Could the staff member's circumstances represent any possible breach of regulatory or other legal requirements eg. incompatibility between the activity and holding a statutory licence for particular research?
10. Do the current engagements of the staff member represent potential conflicts between outside interests (eg working on projects simultaneously for competing business interests)?
11. Could the proposed activity withstand public scrutiny?

6 Procedures

6.1 Obligations of Staff

Staff have a responsibility to ensure that, wherever possible, no actual, potential or perceived conflict arises in the performance of their University duties. If a staff member is aware of an interest that might reasonably be seen to conflict with his/her duties to the University, he/she has an obligation to disclose that conflict in full, and seek a resolution. *He/she must then take no part in the matter(s) relating to that interest until such time as the conflict is resolved in accordance with 6.5 below.*

⁷ The list of questions was drawn up by the University of Colorado (see *Conflict of Interest Policy*, University of Colorado, 1992). Their use is gratefully acknowledged.

Situations may arise that are not clear-cut, and staff may be in genuine doubt as to whether a conflict of interest should be declared. In such cases, staff should err on the side of caution and discuss the situation with an appropriate person, such as a person with responsibility for the issue or area.

If a manager becomes aware of a possible conflict of interest which the relevant employee appears not to have considered, he/she should bring it to the employee's attention for consideration.

6.2 Disclosure

To whom should disclosure be made?

Notification of an actual or potential conflict of interest should be made to the person with responsibility for the issue or area (normally the Chair of the appropriate School Ethics Committee or Service Ethics Committee (see **5** above)). Where there is doubt as to who is responsible for the activity, disclosure should be to the staff member's line manager. In certain cases, disclosure may also be necessary to publishers, funding bodies, or other external bodies or persons.

There may be situations where a staff member is unwilling to disclose details giving rise to the conflict of interest. In such cases, it is sufficient to disclose to the line manager the fact of conflict and then withdraw from the situation concerned. Where a staff member identifies a conflict of interest, but does not wish to reveal the details to his/her line manager, and is unable to withdraw from the situation, he/she should seek advice from his/her School Ethics Committee, or School Ethics Adviser, or the appropriate Human Resources Services Manager, in confidence.

In the case of a conflict relating to research, the researcher should inform his/her Associate Dean (Research). In respect of external research funding, there is an obligation to disclose to the funding body an actual, potential, or perceived conflicts of interest which might affect the research, influence publication, or otherwise affect the project. Likewise, in respect of publication, conflicts of interest must be disclosed to publishers, or editors, and to readers of the published works.

When should disclosure be made?

Disclosure should be made as soon as the staff member recognises the existence of an actual, perceived, or potential conflict of interest.

Information to be disclosed

Disclosure must be made on form **C/I –Disclosure**. Disclosure must include sufficient information to enable appropriate resolution. This is likely to include: the type of actual or potential conflict of interest, the nature of the activity, a description of the roles of all parties involved, the potential financial or non-financial interests or benefits, and any other relevant information.

6.3 Information from Third Parties

A third party may raise concerns about a possible conflict of interest if there are reasonable and substantial grounds that such a conflict exists or could exist. A third party in this context may be a person directly affected by the actual or potential conflict (eg a competing application), or a student or staff member of the University, or another person who genuinely believes that the interests of the University (or affected parties) have been, or may be, materially damaged by the conflict of interest.

Notification by a third party should be made to a person with responsibility for the issue or area, as outlined above in **6.2 To whom should disclosure be made?** If the third party is from outside the University, he/she should bring the matter to the attention of an appropriate staff member. The person notified has the option to dismiss the concern if he/she considers it unjustified. If action is taken on the concern, as outlined below, the staff members allegedly involved must be informed to allow them to deal with the concern.

6.4 Failure to Disclose

Failure to disclose an actual or perceived conflict of interest, or to cease involvement in the situation until the conflict has been resolved may result in disciplinary action. In determining whether disciplinary action is appropriate, consideration will be given to the extent to which the employee was aware of the actual or perceived conflict of interest and/or made a reasonable decision not to declare it.

6.5 Managing the Conflict: Action following Disclosure

The confidentiality of disclosures will be respected as far as possible. The Reviewer (see **5** above) must keep a written record of the disclosure and all subsequent related actions and disclosures. A record must also be kept of the decision/solution in respect of the conflict of interest. This documentation is in the interests of both the staff member facing the conflict and the Reviewer. Where a conflict of interest is ongoing and it is important that the current and future line managers are aware of it, the line manager (if different from the Reviewer) must be informed and given the documentation, with the knowledge of the staff member. This will normally be retained on the local (School or Service) file. In accordance with the provisions of the Data Protection Act, the documentation will be kept on one file only and made available only to those who need to know. This 'need to know' includes the Human Resources Service to which a copy of the paperwork must be sent. Records will be kept in accordance with legal retention timescales⁸ or in accordance with national retention guidelines where these exist.

6.5.1 Once an apparent conflict has been disclosed, the Reviewer is responsible for resolving the conflict of interest as soon as is reasonably possible. Until that time, the staff member must normally take no part in the activity that has been disclosed. Every effort should be made to reach agreement with the staff member regarding the solution.

6.5.2 Advice should be sought from an appropriate department such as Financial Services, Research and Business Office, or Human Resource Services. Where the Reviewer is

⁸ Personal files in Human Resource Services are retained for the duration of the staff member's employment plus six years after the staff member leaves the University.

unable to decide how to resolve a conflict of interest, he/she may refer the matter to the School Ethics Committee.

6.5.3 A decision should be made no later than **10** working days from receipt of the completed form **C/I –Disclosure**, and the staff member notified immediately the decision is made. Where this timescale cannot be met, the Reviewer must make a preliminary decision. This will normally be either:

- to permit the staff member to carry on the activity, possibly with some changes, or
- to require the staff member to continue the suspension of the activity pending a final decision.

In the case of a preliminary decision, this must be made and the staff member notified no later than **5** working days from receipt of the completed form **C/I-Disclosure**.

6.5.4 In most cases, the final decision will be one of the following:

- (a) that there is no conflict of interest or that it is insufficient to be of any concern to the University;
- (b) that the activity be permitted but with some specified changes;
- (c) that the activity be discontinued.

Where the final decision is that there is a conflict of interest and the conflict concerns research, the matter must be referred to the Assistant Vice-Chancellor and Director, Middlesex Research who will determine what further action to take, and send copies of all paperwork to the Human Resources Service for retention.

6.5.5 If any meeting is called to agree a solution to the conflict, the staff member is entitled to be accompanied by a trade union representative or a Middlesex University work colleague.

6.5.6 Where agreement cannot be reached, the matter can be referred to the University Ethics Committee.

Appendix

The following is a list of activities in which staff members often engage. They may be classified into three categories:⁹

- A. Activities that are ordinarily 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 list of examples is not exhaustive.

⁹ The categorisation was devised by the University of Colorado (see *Conflict of Interest Policy*, University of Colorado 1992). Their use is gratefully acknowledged.

A. Activities which are ordinarily permissible:

1. Performance of professionally-related activities such as textbook authorship, editorial responsibilities; participation in scientific or professional association activities, or service on review boards and panels.
2. Acceptance of honoraria for commissioned papers and occasional lectures.
3. Service as a consultant to outside organisations provided that the arrangement does not unreasonably restrict publication of research results obtained within the University.
4. Service on boards and committees of organisations, public or private, which does not distract unduly from University obligations.
5. Performance of duties that are specified under approved arrangements.

B. Activities which appear to present potential conflicts of interest or commitment:

1. 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 in 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.
2. Situations in which the time or creative energy an employee devotes to extra-University activities, including those listed in A above, appears substantial enough to compromise the amount or quality of his/her participation in the teaching, research, or administrative work of the University itself.
3. Activities (research projects, conferences, teaching, consultancy agreements etc) for which employees are personally remunerated that involve, or might be perceived to involve, the University, its name, or facilities/ equipment.
4. Activities that violate, or might 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 which present such serious problems as to be incompatible with University policies:

1. Situations in which the individual assumes responsibilities for an outside organisation that divert his/her attention from University duties, or create other conflicts of loyalties.
2. 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 Intellectual Property policy, or with the University's obligations to research sponsors.

2. Circumstances in which research that could, and ordinarily would be carried out within the University is conducted elsewhere to the disadvantage of the University and its legitimate interests.

This policy was approved by the Executive at its meeting on 4 September 2008 following consultation with the Trades Unions. It is due for review in September 2013.

MIDDLESEX UNIVERSITY

Disclosure of Actual or Potential Conflict of Interest or Commitment

Full Name	
School/Department/Service	

Please provide a brief statement of the relevant activity or situation making it clear what you consider the actual or potential conflict of interest or commitment to be. (See especially paragraphs 2, 3, and 4 and the appendix):

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Signed		Date	
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This form should be handed to the staff member responsible for the issue or area involved (see paragraph 7.2) who will review this form and discuss the matter with you.

MIDDLESEX UNIVERSITY

Review of Existing or Potential Conflict of Interest or Commitment

Name of Reviewer	
School/Department/Service	
Re (Staff Member's Name)	

Reviewer's Assessment ((See especially paragraph 5 and 6.5))

Preliminary Decision (to be ticked as appropriate)

1.	The activity may be continued		or
2.	The activity may be continued but with the following changes		or
3.	The activity should be resumed at this stage		

Comments (where appropriate)

Signed		Date	
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Final Decision (to be ticked as appropriate)

1.	There is no conflict of interest		or
2.	The conflict is negligible and is of no concern to the University		or
3.	The activity may be continued but with the following changes:		or
4.	The activity must be discontinued because		or

5.	The matter should be referred to: (see paragraph 6.5.5 and 6.5.6)		
	On the following grounds:		

Signed		Date	
Print Name			