

## Including College Teaching Officers (CTOs) on External Research Funding Applications through the University of Cambridge

### What is the issue?

University of Cambridge is comprised of both Colleges and the central University (which in turn comprises of Faculties, professional services departments etc). The 31 Colleges are separate legal entities to the central University, and cannot generally hold grants from a funder perspective. Therefore the central University is the grant-holding body for the University of Cambridge. When College personnel want to hold a research grant, they have to apply via the central University through one of the grant holding departments. College Teaching Officers (CTOs) are not University employees, however they are able to hold the position of Principal Investigator (PI) or Co-I on research grants. This assumes that the funder allows them to be PIs, that their College is willing to support their participation in the research project and that the Head of Department has formally agreed to host the PI and associated research grant under the University's research governance rules and regulations.

### So how do we manage this at the University of Cambridge?

Currently, there are three structures in practice to manage the inclusion of College personnel on research grants, which should form the basis of Faculty - College discussions. As the Faculty represents the University and bears the risks and liabilities for its research grants approved by the University of Cambridge, it has ultimate decision-power in these conversations with the College. The Cambridge Research Office (CRO) can advise on the options and the mechanics, but Research Grant Administrators (RGAs) and Faculty Administrators should lead these on behalf of their Faculty.

### Considerations to inform Faculty – College discussions:

- Line management duties and reporting structure
- Cost recovery and VAT implications through transfer of funding
- University obligations to the funder such as funder terms and conditions on use of funding
- Contractual arrangements with non-Cambridge entities
- REF eligibility of funding
- Relationship with CTO and College
- Immigration status of the individual (if applicable)<sup>1</sup>

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<sup>1</sup> Immigration law is inherently complex and fast changing. Should the CTO be working in the UK under visa restrictions please consult with the University's Compliance Team, [complianceteam@admin.cam.ac.uk](mailto:complianceteam@admin.cam.ac.uk). For advice as of September 2020, please see Annex.

## Scenarios

The following scenarios are the most typical that present themselves for the inclusion of CTOs on external research funding.

- 1) CTO applies for small/simple award with no staff management duties (e.g. BA small grant) and no additional research contract is required (e.g. no external collaborators, DTA, MTA, CDA) [SIMPLE GRANT]
- 2) CTO is only % of time on grant or has staff management duties or the project requires a research contract (collaboration agreement, DTA, MTA, CDA) [COMPLEX GRANT]
- 3) Current college employee wants to be included on research grant at a point when they are no longer in College employment (e.g. JRF after end of their fellowship)

## Routes for contractual arrangements

The following routes should be pursued to address the scenarios outlined above.

### **Route (I): College – Funder contract** (ad scenario 1)

Some funders may be willing to deal directly with the College (e.g. British Academy small grants). No University involvement would be required at application and at post-award stage. This situation is exceptional.

#### Implications:

- Project would not be REF-able as not held on the grants module.

### **Route (II): sub-awarding from UCAM to College** (ad scenario 1)

Where the funder is not willing to deal directly with the College, the application needs to be approved and submitted by the University (Faculty and CRO).

At award stage, the project could be sub-awarded to the College (CRO will use a standard sub-award contract; CRO set up budget on grants module for Faculty; College invoices the Faculty). Where University infrastructure is used, the Chest-share of the overhead could be retained as well as possibly the Faculty share in order to ensure that administrative support, library and other infrastructure costs are covered. Where the grant holder works from the College only, the estates of the grant could be transferred to the College.

Implications:

- Where additional external entities are involved in the project and those entities do not need to interact with the University directly, then the College sets up its own sub-awards and flows down the terms and conditions of the funding between the University and College. Under other conditions, the University will set up contract with external entities following Route (III).
- VAT charges will apply as the College is providing a service to the University. The default sub-award will state clearly that the amount transferred is inclusive of all applicable tax and the College covers the VAT charges. If the College were not willing to do so then the Faculty would have to cover the charges or decide not to accept the award.
- The project would be REF-able as the budget would be held on grants module and CTOs are submitted for REF purposes.

**Route (III): UCAM - HR route** (ad scenario 2, exceptionally scenario 1)

Note: Non-University employees are not allowed to manage University staff. Following HR advice, visitor agreements are not appropriate in these scenarios due to insufficient risk management. As the PI will have project and staff management duties, they need to become either employees of the University or seconded into the University based on a HR agreement between the Faculty and the College.

**Option 1: employment route (preferred route)**

- If the CTO is working on a full-time College contract, the College reduces the employment contract for percentage time commitment on the grant and the Faculty offers an employment contract for percentage time committed to the grant. The CTO is paid for their time directly from the grant by the Faculty, with the remainder of their salary covered by College as usual. The College will therefore make a saving on staff salary costs and can use these for teaching replacement if required.
- All direct research expenses must be covered by the grant or end up as shortfall to the Faculty. All overheads should remain with the Faculty and the Chest as University infrastructure is used to support the project.
- Research collaboration agreements need to be handled through CRO (e.g. those involving third party legal agreements). Where a collaboration agreement is required with an external organisation (e.g. NGOs/industry/other HEI), CRO is responsible for negotiating and signing agreements.
- The CTO's salary for their work on the project would be costed as for any University employee with similar duties. This may be more beneficial to the individual than their CTO salary.

Implications:

- This solution is financially more beneficial and certain as there are no transfer of funds and therefore no VAT payments due to HMRC.
- The CTO will be subject to clear employment and line management structures within the University; all standard policies apply, e.g. redundancy process and payment at end of contract if CTO employment at the University is longer than two years.
- The College could make commitment to CTO to revert to their full contract at the end of grant or could grant the CTO leave of absence for the duration of the project.

**Option 2: secondment route**

- The salary of the CTO should be confirmed by the College and costed into the grant.
- The CTO stays on their full-time contract at the College. A standard secondment contract<sup>2</sup> is set up between the Faculty and College. The College continues to pay the CTO's salary, the Faculty reimburses the salary and oncosts (National Insurance, pension contributions) to the College from the grant. All overheads remain with the Chest and the Faculty because University infrastructure is used.
- The standard secondment agreement incurs VAT charges on the whole amount being transferred (however, do note point 2 in *VAT Position* below).
- Research collaboration agreements need to be handled through CRO (e.g. those involving third party legal agreements). Where a collaboration agreement is required with an external organisation (e.g. NGOs/industry/other HEI), CRO is responsible for negotiating and signing agreements.

Implications:

- The VAT position is complicated with risk of additional 20% costs on all financial transfers to the College.
- Where VAT is an eligible cost to the funder, it can be included in the project costing but will reduce the amount of available budget for the project. If the funder at a later point decides that VAT is ineligible, this risk rests with the Faculty and College; prior conversations are therefore required about which carries this risk.
- There is a potential equality/fairness issue with this option. If the CTO is working on a grant as a PI but being paid a CTO salary, they could be in receipt of a much lower salary than others doing the same work and being paid at a higher grade by the University.

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<sup>2</sup> A [template secondment agreement is available here](https://www.hr.admin.cam.ac.uk/policies-procedures/secondment-policy): <https://www.hr.admin.cam.ac.uk/policies-procedures/secondment-policy>. The agreement should include a role profile that covers all expected duties of the CTO, including supervision duties of PhD students and other staff if applicable.

**Route (IV): standard route** (ad scenario 3)

This scenario should be managed as a normal application for a research grant, with the applicant holding a fixed term grant-funded post for the duration of the project.

## Annex – operational considerations

### Pre-award: what needs to be considered before submission?

- The CTO needs to discuss their application plans with their planned host Faculty as well as their College (Bursar and Senior Tutor) as early as possible and seek their approval.
- The Faculty needs to approve the funding application following standard University and Faculty policies in order for application to be approved and submitted by CRO.
  
- Under Route (III), the Faculty would by default retain all overheads as the CTO would be using University and Faculty infrastructure and administrative support. An exception may be where the CTO works exclusively from the College and Estate costs and parts of the Faculty overhead may be transferred. The Chest share of the overhead will always be retained by the University. VAT may be applicable where funds are being transferred from the University to the College.
  
- Under Route (III) (a), the College (the Bursar or equivalent) will need to confirm to the Faculty (RGA) in writing (e.g. email) to be forward to CRO:
  - that they agree to release the CTO for the percentage time to be worked on the grant;
  - that the CTO's College employment contract extends up to or beyond the end date of the grant (and if it does not, the CTO should confirm they are happy to only be employed on the grant only e.g. at 10%); and
  - they (the College) do not expect any overheads. As the CTO will be University staff, the assumption should be that the department will retain the department share of the overheads associated with the CTO's time.
  
- Under Route (III) (b), there will need to be clarity, in writing, between the College and the Faculty on the following:
  - that the College can release the CTO for the percentage time to be worked on the grant;
  - the College need to give the cost of that percentage time, broken down into salary, NI, pension (xx, xx, xx);
  - that the CTO's employment contract extends up to or beyond the end date of the grant, no retirement etc;

Once this is clarified, the RGA will then enter the CTO's salary/NI/pension into X5 using the offscale grade and additional payments tab on the DI Staff Tab. The fte should be entered on the main tab, in order to ensure the overheads (if applicable to the funding scheme) are calculated correctly.

## Research Contracts

If the project has external collaborators, CRO will determine whether contracts with these entities are required. CRO will negotiate and sign such agreements. Please follow the guidelines below.

For Confidentiality Disclosure Agreements (CDAs), Material Transfer Agreements (MTAs) and Data Transfer Agreements (DTAs):

Submit the request on-line and complete the [due diligence questionnaires](#).

For all other agreements contact [AHSSContracts@admin.cam.ac.uk](mailto:AHSSContracts@admin.cam.ac.uk) in the first instance with these details:

1. RG reference if the contract comes under an application, existing grant or an existing project.
2. PI's name
3. Funder's name(s)
4. Project Title
5. Project start and end dates
6. Key documents not already provided to ROO e.g. application, offer letter, contract
7. Any relevant information such as deadlines, other parties involved, etc.
8. X5 reference

## HR: Immigration

(Information correct as at September 2020 – please check for updates with the HR immigration and compliance team [complianceteam@admin.cam.ac.uk](mailto:complianceteam@admin.cam.ac.uk) with regard to individual who are employed while on a visa in the UK)

### Background

In terms of immigration restrictions, almost all of the visa types we see at the University (e.g. Global Talent/Tier 1, dependant and spousal visas) offer no restrictions on employment. Issues will only arise where the individual holds a **Tier 2 visa** (to be rebranded '**Skilled Worker visa**' from 1 January 2021). The vast majority of researchers at the University are engaged via a Tier 2 visa.

The University and each of its 31 constituent Colleges are separate employers, meaning that each College must hold its own Tier 2 sponsor licence in order to sponsor staff via the Tier 2 visa route. It is not possible to amalgamate the licences into one single licence covering all 32 separate bodies.

The fundamental principle of sponsorship is that the sponsored individual works principally for the sponsor/employer. As taken from the Tier 2 sponsor guidance:

“You cannot sponsor a migrant if you will then supply them as labour, to another organisation, regardless of any genuine contractual arrangement between the parties involved.”

In addition:

“They [the Tier 2 visa holder] must not be contracted to undertake an ongoing routine role or to provide an ongoing routine service for the third party regardless of the length of any genuine contract between you and another organisation.”

These principles are there to ensure that the sponsorship system is not abused i.e. sponsoring an individual to do a certain job for a certain employer, but after arrival in the UK the individual goes and does something completely different.

However, it is possible for an individual holding a Tier 2 visa to work for two different employers at the same time, and there are two distinct sets of Rules which govern how a Tier 2 visa holder can do so. It is relevant to detail both of these now and then explore how these would fit into the two proposed scenarios.

#### “Supplementary employment”

These Rules allow a Tier 2 visa holder to work for another employer provided all of the following are met:

- The individual remains sponsored by their existing employer and be paid min. £30,000; and
- The role they will undertake is in the same profession as their ‘main’ job; and
- The role will be for no more than 20 hours per week; and
- Be undertaken outside of their normal working hours for their main employer.

The other employer does not have to be a sponsor and there are no minimum salary requirements to meet for this second role.

#### “Secondary employment”

Where supplementary employment is not possible, the only other option is ‘secondary employment’. This provides the individual with two visas and two sponsors running concurrently. However, to gain the second visa the individual would have to pay all associated fees, and their second role would have to meet all sponsorship requirements (i.e. the new employer/sponsor would have to meet the RLMT, meet minimum salary requirements etc.).

### **Option 1: Employment route**

This scenario has been considered within the context of the above framework.

For “supplementary employment”, this scenario would result in the individual remaining sponsored by the College for a % of time on their Tier 2 visa whilst undertaking supplementary employment at the University for the other % of time.

In this context, reducing the hours of the College contract *would* cause an issue for their ongoing sponsorship. Where an individual’s hours are reduced, under current rules their salary must not then fall below £30,000 or they can no longer be sponsored and would lose their Tier 2 visa. This minimum salary rate cannot be pro-rated; it is a ‘hard’ minimum.

The minimum rate also cannot be met or topped up by other sources of income/employment – it can only be met through the main employment/employer. Therefore, if the reduction in hours resulted in the salary from the College falling below £30,000, this scenario could not currently be



realised by way of the “supplementary employment” Rules as it would result in the individual losing their visa.

Equally, “secondary employment” raises similar such issues. To be sponsored simultaneously by a College and the University, in order to undertake two jobs, would mean that the role at the University would first need to be advertised in line with the Resident Labour Market Test. Even if this was possible, for “secondary employment” to be viable the individual would have to be paid a minimum of £30,000 by each employer. This is unlikely to be viable in most cases.

A caveat to this is the new immigration system which will launch from 1 January 2021. Under the new system, the above framework will remain in place but the salary rules will be significantly reduced. In this context, (and as long as the initial College contract was not for more than 4 years), the minimum salary rate for a researcher holding a Skilled Worker visa will be **£20,480**.

Therefore, provided the %time at the College did not result in a salary reduction below this amount, this arrangement would be possible from 1 January 2021 by way of the ‘supplementary employment’ rules. The following would have to be in place:

- The individual is initially sponsored by the College to facilitate the issuance of the Skilled Worker visa;
- The %time on their contract did not reduce their salary below £20,480 at any time;
- They undertook “supplementary employment” at the University for no more than 20 hours per week. No minimum salary requirements on the University contract and no restriction on salary source.

There would be no sponsorship obligations on the University in this scenario, which is beneficial to ourselves.

## **Option 2: Secondment route**

Secondments are not permitted for those holding a Tier 2 visa. The principle being that where you are sponsored for a role, then you should only be undertaking that role and not a different role for another employer (unless the role can meet the supplementary or secondary employment rules). Doing so would be a fundamental breach of the Immigration Rules. The secondment route is therefore not viable for Tier 2 visa holders.

## **Post-award**

CRO will send any financial reporting due to the funder, but will require input from the College and Faculty. For any budgets held in College, College would need to provide an expenditure statement so that CRO can report back to the funder. Expenditure statements should normally include staff breakdown and breakdown of other evidenced expenditure against awarded headings. Any other reports due will need to be submitted by the PI direct to the funder.

## VAT Position

### Q1: What is the difference between the employment and the secondment route from a VAT perspective?

If CTO becomes employee of the University and no funds are being transferred to the College then there are no VAT considerations.

For secondments, the default assumption should be that VAT is chargeable by the College to the University.

### Q2: Is VAT always applicable under the secondment route?

If a CTO is seconded for non-business research and has non-business research as part of their remunerated employment duties at the College, then:

Where a secondment takes place between two charities and it meets the conditions below, no VAT will be due on the payment to the employer:

- the employee has been engaged only in the non-business activities<sup>3</sup> of the lending charity/organisation and is being seconded to assist in the non-business activities of the borrowing charity/organisation; **and**
- the payment for the supply of the employee's services does not exceed the employee's normal remuneration

If either test is failed, the supply is subject to VAT at the standard rate. Similarly, if the individual is per employment contract only teaching at the College but will be researching at the University under the secondment agreement, then standard rate VAT will apply. If the supply is one of teaching provided by one eligible body to another eligible body (e.g. University to/from college), this will be VAT exempt.<sup>4</sup>

#### Implications:

- College is likely to charge VAT on secondments (contractual amount should be inclusive of all applicable tax) – Faculty to guard itself from having to cover out of reserves (either cover out of overhead or transfer of funds to cover all applicable tax per contract).
- Employment route works better from a VAT perspective as no transfer of funds and clear VAT position.
- CTO contracts to state research as part of their duties(?), which would be beneficial for Tax position on secondments.

#### <sup>3</sup> What is a non-business activity?

Publically funded research (not commercial activity); charity funded research (as long as non-business activity at the funder); teaching (business activity but exempt, with no VAT due).

<sup>4</sup> Source: this is taken from paragraph 5.17 of the VAT notice on charities which can be found here: <https://www.gov.uk/guidance/how-vat-affects-charities-notice-7011#sect5>; University Tax Office 8/7/2020).