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## Checklist for university research contracts

This checklist is to help those responsible for negotiating and approving research contracts to decide whether or not a proposed research project is charitable.

It consists of main questions and subsidiary questions. Each main question (in bold) is numbered and followed by explanatory material including, in most cases, some subsidiary questions. Not all the main questions will be applicable to every research project. The subsidiary questions are intended to help answer the main questions.

If the answer to each of the main questions that are applicable to the project is yes, the research project should be charitable.

### **1. Is the proposed research calculated to promote the university's charitable aims?**

The research must be calculated to promote, in a meaningful and direct way, the particular charitable aims of the university.

Does the university's charter have an objects clause? If so, is the proposed research compatible with those objects?

If there is no objects clause, can the university show, from its practice over the years, that it has an aim (such as the promotion of education and the advancement of knowledge and understanding for the public benefit) with which the proposed research is compatible?

If the research proposed does not fall within the university's charitable aims, there are three options:

- (a) update the university's aims, where this is possible and appropriate, so as to be compatible with the proposed research. Of course, the updated aims will still need to be charitable; or
- (b) have the research undertaken by a non-charitable trading subsidiary of the university; or
- (c) do not undertake the proposed research.

### **2. In the case of a collaborative project, if its scope is wider than the university's own objects, are the university's resources only used within the project on research which falls within the university's charitable aims?**

Are there safeguards in place to ensure that the university's contribution is used appropriately? The university may act solely in furtherance of its own charitable objectives. The fact that the government encourages research in collaboration with commercial companies does not abrogate this responsibility of the trustees.

### **3. Is the proposed research in a subject, or directed towards an outcome, which is of value?**

The research does not need to test a hypothesis and, if it does, it does not matter whether that hypothesis turns out to be valid or invalid. But the research must advance or enhance knowledge or understanding or produces other outcomes for the public benefit, whether or not it is of immediate practical application.

#### **4. Is the research carried out for the public benefit?**

The research must be carried out for the benefit of the public or a section of the public, and not solely or mainly for self-interest or for private or commercial consumption.

Is the benefit identifiable, related to the university's aims, and balanced against any detriment or harm? Are the beneficiaries appropriate to the aims, and not unreasonably restricted or excluding those in poverty from the opportunity to benefit? If there are any private benefits, are they incidental?

The dissemination of the useful knowledge gained will in many cases constitute adequate public benefit (see next question).

#### **5. Is the research undertaken with the intention that the useful knowledge acquired will be disseminated to the public and others able to utilise or benefit from it?**

Will the knowledge acquired as a result of the research be made available or otherwise accessible, such as through teaching or the publication of papers in academic journals, books, booklets, magazine articles, papers or sundry notes, including publication in electronic form?

If the university wishes to restrict access to those who have sufficient reasons to study the material, will the material be catalogued and its existence made publicly known?

If the university wishes to charge for access to the material, by selling publications or by charging for services or facilities, and the charge is more than would cover the cost of those services or facilities, is the charge proposed reasonable and necessary in order to carry out the university's aims, for example in maintaining or developing its activities? If the charge would restrict the benefits of the research to those who can afford fees, this may call into question whether the research is carried out in furtherance of the university's aims or for the public benefit. If the charging cannot be justified, and there a degree of permanence to the research activity, or it generates a significant profit, the activity should be handled through a non-charitable trading subsidiary.

Are the results to be disseminated publicly within the appropriate academic timeframe (normally within six months of the research being completed or the outcomes of value occurring)? The longer any delay in publication beyond the normal academic timetable, the greater the burden of proof on the university to show that the delay is reasonable.

If pre-publication access to research findings is to be given to a sponsor, is that access legitimately incidental to action properly taken by the trustees in the interests of the university for the public benefit, i.e. necessary, reasonable, and in the interests of the university in the circumstances?

Is the research is intended to produce intellectual property that can be protected by registration? If so, registration may amount to adequate and appropriate dissemination.

#### **6. If the results of the research are not to be disseminated publicly, will they be applied or exploited practically for the public benefit?**

This includes making the results available for further research by the university or by others, such as by licensing the results so that they can be applied for public benefit and a financial return for the university. This may in itself constitute adequate public benefit. However, where an exclusive licence held be a commercial or non-charitable partner precludes publication or further use by the university, the university will need to show that any non-charitable benefits are legitimately incidental to the achievement of its charitable aims for the public benefit.

In the case of sponsored or contract research, if the university cannot secure the public dissemination of the results of the research within a reasonable time frame, the research may still be charitable if the university has a particular research interest in the work to be undertaken. Does it already undertake or fund related research? Does it have an interest in the acquisition of more general knowledge or other benefit to its current fundamental research interests? Are there appropriate arrangements in place for the protection of any intellectual property rights that will be owned by the university? And is there adequate financial benefit to the university?

**7. Are any private benefits accruing to individuals or non-charitable or commercial entities legitimately incidental to the achievement of the university's charitable aims for the public benefit?**

The issue here is not the overall purpose of a research agreement between a university and a company, but the purpose and scope of the university's participation in that agreement.

Are the private benefits of a subsidiary or incidental nature, and given and promoted only with a view to carrying out a main charitable aim? Is the private benefit necessary (either in furthering the university's objects or as a consequence of doing so), reasonable (in relative amount), and in the interests of the university in the circumstances?

Note that incidental may not mean small or insignificant in absolute terms in the context of a multi-million pound contract. It may be legitimate for some individuals or businesses to make a significant return, if dictated by market conditions and the relevant circumstances of the case, in order to achieve the intended public benefit result.

Do the private benefits directly contribute towards achieving the university's aims and/or are they a necessary result or by-product of carrying out those aims? Does the private benefit follow from some action that is taken, and only taken, with the intention of furthering the university's aims? And is the amount of private benefit reasonable in the circumstances, based on what the university could have reasonably known at the time?

If not, then the private benefit is a non-charitable aim in its own right, and it would be a breach of trust if the trustees decided to carry out activities resulting in that benefit.

**8. If the research is for, or in partnership with, the government or political parties, is the university satisfied that the research does not champion or otherwise support the government or one political party or discredit another?**

The university may express support for particular policies which will contribute to the delivery of its own charitable purposes as long as its independence is maintained.

**9. If the research is non-charitable, can the university justify the use of its resources for that research on the grounds that it is an activity to raise funds or other resources for application to the university's charitable aims?**

If the research is non-charitable and constitutes a trading activity, it can be undertaken directly in certain conditions. However, substantial ongoing non-charitable trading should normally be channelled through a separate non-charitable trading company ([see checklist on funding a technology transfer company](#)).

The university may trade on a substantial and continuing basis only if the trade undertaken is part of actually carrying out the main charitable aims specified in its governing document.

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