

# Consulting

A Researcher's Guide



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# Introduction

This is a practical guide about consulting. There is a checklist for you in the pocket on the inside of the back cover.

This Guide is written for anyone who wishes to begin consulting or for those who wish to refresh their existing activity.

Its purpose is to show you how to work as an expert for industry and commerce as an individual research consultant and in certain specialist roles, such as an expert witness.

In particular it aims to:

- classify the types of consultancy and relate them to you
- propose how consultancy assignments might be won and carried out
- suggest what you should check from intellectual property, contract and potential conflict perspectives

Working through your institution's authorised consultancy company or contracts office provides many advantages, which are covered in this Guide, and ought to be your preferred way of undertaking consultancy assignments.

This is not an institution-specific booklet and so you will need to follow the exact rules and procedures which your institution operates. Nor is it a substitute for you taking your own independent professional advice.

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The idealistic image of a consultant is someone who gets called upon regularly to provide high-level advice on glamorous and very rewarding assignments. The reality is usually different. Whilst such work can indeed be intellectually and financially rewarding, it requires real effort to secure assignments, time to carry out the work, the willingness to accept a degree of risk and, very often, privileged and ready access to state-of-the-art resources.

Just as consultants from private firms face certain preconceptions about them, as a consultant from a research organisation you have particular image and other challenges to overcome. However, you have special advantages too. We will look at both sides of the coin in this Guide.

There are three types of activity in research-based organisations which generally fall under the consultancy heading. These all generate commercial income from the application of know-how and the use of facilities. So it is as well to be aware of them. The first three are concerned with consulting as an individual which is the focus of this Guide.

**1 Consulting Services** – the provision of services to organisations, based primarily on skills and expertise, and the main type of consultancy relevant to a research institution. Firms access the knowledge and experience of researchers to resolve issues outside of their own field of expertise. This needs to be distinguished from research. Under a consultancy contract you are not being paid to develop new IP (except copyright in any consultancy report): if you are then it should be a research contract (see “Research Contracts: A Researcher’s Guide”).

**2 Expert Witness** – a specialised form of consulting service in which a researcher is engaged to provide evidence in a legal action. Although best known in the medical field, typically in negligence suits, it is also commonly used in other cases involving a wide range of research areas. The expert witness is employed to add expert technical input to the arguments given in Court and provide high level analysis. However an expert witness is often also asked to explain what the case is about to lay people or professionals involved. This can be very lucrative work for those with a well-established reputation in their field, but the expert witness will be required to be available to suit the timescales of legal cases which may not always fit well with other commitments.

**3 Due Diligence** – is the other main specialised form of consulting service, in which a researcher is engaged to provide advice in the course of a significant investment. Typically this happens when an investor, such as a venture capital firm, is looking to make an investment in an early-stage business or where a large company is considering buying a smaller one. Frequently the purpose of the consultancy is to validate the novelty or viability of the technology and its market and application assumptions.

There are particular challenges and risks in undertaking expert witness and due diligence work, which Section 6 highlights.

There are various other types of activity which industry sometimes terms 'consultancy', but which are not consultancies. A standard consultancy agreement should not be used for them. Examples of these are:

- **Equipment Use** – This is where industry requires access to specialist equipment (and often the skills required to use such equipment). Projects are generally of a short duration with a view to producing specific results, e.g. to test particular properties of a new material or to run a number of samples through a mass spectrometer. They generally require equipment which the customer does not possess. Think carefully about which entity undertakes this work. It can be seen as trading. If it is it should be done through a subsidiary of the research institution, if the research institution is a charitable body. The work also has to be scheduled carefully so that it does not interfere with the main purpose for which the research institution has purchased the equipment. Equipment purchased under a grant or research arrangement must only be used with the permission of such grant awarding or contracting body. Such use of equipment should be fully compliant with any health and safety rules.
- **Product Sales** – Sometimes academics can be retained to make and sell products, such as chemical or biological materials, albeit in limited quantities. This can be to order or sometimes speculatively. Such work can expose you and your institution to serious liabilities if not managed carefully. This type of work can also be seen as trading and impact on an institution's charitable status. You therefore need clear contract terms for any such arrangement.

Such arrangements should only be on the basis of a clear contract and need proper insurance.

Some consulting services may evolve to become a continuing, standalone business in which a group of people between them offers a service in a particular field, e.g. analytical chemistry or organisational behaviour. They are most usually set up as adjuncts to research units or departments to handle work which is not a mainstream research interest. They will often have to be set up through a separate legal entity to ensure that any such activities comply with the institution's charitable status. These businesses often have a dedicated staff who draw upon a network of specialists and facilities of the institution on an assignment by assignment basis. The cost of the use of any such specialists and facilities will have to be included in the client fee. The business will have to reimburse the institution for the use of them, so that the institution is not subsidising the activity nor undermining market rates and competing artificially with commercial providers.

As a researcher you will be carrying out a range of duties and consultancy will only ever form part of your portfolio of activities and is likely to rank behind research, teaching and your essential administrative duties. Nevertheless, consulting can link back constructively into many of your activities and particularly creates good research opportunities.

To assist you in distinguishing between a consulting assignment and a research opportunity, a good question to ask yourself, excluding confidentiality issues, is “Is it likely that this work will lead to the production of new knowledge, which is capable of being published?”. If the answer is “no” then it is likely to be consulting work. If the answer is “yes”, then it is probably better dealt with as a research project.

Consulting opportunities can arise early in your career, especially if you are active in promoting your expertise. In general the amount of consulting that you do will increase over time, as will your fee level. These usually grow as you establish your reputation and develop your network through your research successes and as you engage in other enterprise activities, such as spin-out companies and licensing.

If you are to be involved in any consulting activities you must obtain all of the necessary internal permissions in advance and involve your institution’s Contract Services Office or its equivalent and, if there are non-routine aspects of equipment use, inform your institution’s Health and Safety Officer. Be sure to follow to the letter your institution’s policy on the use of its notepaper, business cards and logo.

In general your institution (and any client) is likely to prefer you to work through its system, rather than you acting in a private capacity. In fact it may insist that you do. If your institution has charitable status there is a number of complex issues to be considered and you will need to be very careful to ensure that any private consulting that you plan to carry out does not put that status at risk. Always check first. Contact your institution’s authorised office(s) to find out about the specific benefits it offers by undertaking consultancy through its auspices. However, if permitted by your institution, you can undertake consultancy work through a privately-owned service company or through self-employment, which have differing tax, legal and risk issues. Further information on this subject is available from public sources (see References in Section 7), but expert advice should be taken before any consultancy work begins.



Consultancy activities based in research institutions are undertaken because they provide benefits to three parties – the client, the institution and the researcher (i.e. you). All three must benefit if the process is to continue successfully.

- The client benefits through gaining access to resources e.g. skills, expertise, equipment that are needed but are not available in-house. This is often because the client encounters an unexpected problem that cannot be resolved with internal resources. This is why clients' requests are often expressed as being urgent. Although the client is accessing the institution's skills, expertise and equipment, the real benefit comes from the solving of the problem. To succeed in consultancy, it is essential to understand exactly what the client thinks is valuable. This in turn can be reflected in the fees charged.
- A research institution engages in these services to fulfil its wide public-interest role, to make available its know-how and facilities outside its own sector, to broaden and develop its contact with business, to generate income for the institution and for the individuals involved and to support government policy. Engaging in consultancy enables staff to become involved in current issues and familiarises them with the challenges faced by diverse organisations of all sizes and to gain practical applied experience. Of course any income that is generated can be used to enhance the institution's services and facilities.
- The value of consultancy to you is in many ways similar to the benefits to the institution, such as familiarity with commercial issues and a wider professional network. Many consultants from research institutions enjoy the process of solving 'real' industry problems and of establishing themselves as experts in particular commercial issues. In addition, of course, there are personal financial rewards on top of your basic salary.

## Fees

The fee that you can charge will vary from case to case and will depend on many factors. A point of comparison is the commercial rate charged by professional firms (e.g. lawyers and accountants) and independent consulting firms (e.g. consulting engineers and management consultants). Remember, however, that these firms have higher cost bases (the full-time costs of premises and staff, for example, which they must pay for even in the unavoidable periods of low client income). They also have

well-established brands, with the reputation for quality which that implies, together with tailor made systems and processes, and track records, that enable them to command high prices.

Your fee basis will depend upon:

- the value to your client of the assignment
- the rarity of your expertise and knowledge
- your research reputation, consultancy track record and other relevant accomplishments
- the stature of your research institution and its brand
- the facilities and other resources available to you and their quality and cost
- the degree of convenience to yourself e.g. timescale given to carry out the work, time of year, geography
- any special circumstances or demands required of you e.g. appearing as an expert witness in a court or tribunal, agreeing to a non-compete clause, etc
- the clarity of the brief and the level of cooperation and resources offered by your client
- the opportunities offered by the assignment in respect of potential for development into research or teaching opportunities for yourself and your institution and the practical experience for you
- the cost of your professional indemnity insurance and the extent of its cover

Do think about all of these factors when considering what fee would be appropriate. Bear in mind the particular circumstances of each one of your assignments. Also you should check your institution's or school's policy to see if there are some set rates or rules which apply and therefore affect your fee.

What you will actually achieve as a fee for each assignment will be influenced by your level of negotiating expertise and that of your institution and, ultimately, what the client can afford and is willing to pay.

It is a common feeling amongst researchers that they undercharge significantly for consultancy work. By thinking thoroughly about all of your *plus* factors, you will likely be able to quote the *right* fee and not undersell yourself. This may still be a lower rate than private sector consulting firms, for the reasons described previously. Working through your institution will help to distance you from the face-to-face discussions about money, contracts and intellectual property leaving you free to keep cordial relations with your client and to focus on the challenges of the assignment.

Your institution's authorised office will be able to advise you on fee levels and structures and will have guideline day rates. Remember that there will be other costs associated with your fee, such as insurances, travel and any accommodation, communication costs e.g. use of internet, telephone, disbursements (stationery, photocopying) and perhaps value added tax (VAT). You must check your professional indemnity insurance and your business use travel insurance. If you are making use of your institution's facilities, you must include the full cost of these in your quote and arrange in advance to settle these costs through the relevant accounting arrangements. If you are carrying out a management consultancy assignment (e.g. advising on a management structure) then these costs will probably be low, but if you are, say, restoring a historical tapestry, the costs might also include use of your institution's scientific equipment and materials. Thus your fee may well represent only half of the charge that will be made to the client and you must make it clear to your potential client when quoting for the work what your likely total costs will comprise i.e. fees plus all associated costs.

Some companies will pay you an annual retainer but be careful to see if there are any undue obligations upon you or competitive restrictions. Research institutions normally limit the amount of time that its employees can carry out consultancy work as individuals. A limit of twenty per cent is common i.e. a day a week on average, often up to a maximum number of days a year, usually about thirty. Not all researchers can undertake consultancy work – so check with your supervisor and your employment contract.

Some institutions have established successful wholly-owned firms for the marketing and management of institution-wide consulting. The staff are experienced contract specialists, negotiators, marketers and project managers. Apart from securing and assisting in the management of

assignments for you, they will have an excellent idea of what fee could be obtained for your consulting work and insurance for it. Check to see if your institution has such a company and see what terms they offer. The services they provide and increased fee negotiated may more than cover any commission that they charge.

There is often confusion between the terms *marketing* and *selling*. In our Guide, *marketing* is used to mean the process of promoting your services to the marketplace generally, while *selling* will mean the process of securing a specific sale with a specific client. The boundary between the two is often marked by a prospective client enquiring about a possible project. When describing your services generally to a prospective client you are engaged in marketing, but when the client says 'we need some assistance with...' or 'it sounds like you might be able to help us with...', you have entered a sales process. Of course, if you receive an explicit request to tender for a project then you are immediately into selling. However, even this is almost certainly the result of some previous marketing.

It is difficult to over-emphasise the importance of marketing in consultancy. The main constraint on most consulting businesses is their ability to make the market aware of what they have to offer. This is particularly challenging for you because your skills are probably capable of being applied to a wide range of needs, and are therefore difficult to target. Moreover, market awareness is particularly important in a consultancy business since it is generally needs-driven as clients only commission work when they have a need, and it is desirable that your name is already familiar to them when that need arises.

When promoting your services, you will be fighting the pre-conceived notion that you are more interested in ideas than in applications and that you treat consultancy as a hobby.

### **Common stereotyping of a research consultant**

- boffin type
- head-in-the-clouds
- not interested in anything or anyone outside of your field or circle
- a stranger to deadlines

Do what you can to demonstrate a positive image of your special expertise and experiences and make it clear that a professional service is being offered. Tailor your approaches whenever appropriate and possible.

### Dispel typecasting by characterising yourself as

- an established expert – with “lots of clout”
- a source of inspiration and innovation
- an agent for accessing important networks and state-of-the-art facilities
- a counterbalance to insularity
- familiar with project-based work

### Message

One of the key challenges in marketing services is the balance between being general and being specific about what you have to offer. Being too general risks reducing your credibility by giving the impression that you believe you can undertake an unrealistically wide range of activities; it also risks the target client not realising that you can address the specific issue. Being too specific, on the other hand, may give the impression that you only undertake certain types of work, none of which will be the one of interest to the client. The usual approach to resolving this challenge is to strike a balance between the two. Typically, marketing statements give information on the general underpinning skills:

*“Outstanding expertise in the application of leading-edge research in X to industrial problems”*

Creating such statements requires considerable skill and practice, and the study of competitors’ or others’ literature is often very helpful. Support your statement with brief case studies of successful assignments.

### Getting Started

The first task in marketing is to understand exactly what you have to offer such as skills, expertise and equipment. What is distinctive about

them and how may they benefit clients? Consider the offering within the competitive environment represented by the client's own resources, other research organisations and professional consultancies. Develop some form of marketing statement that combines distinctiveness with brevity. This can be used in written marketing material such as websites and in oral form. It is called an 'elevator pitch' i.e. what captivating things would you say about your service in the time you might have in a lift ride with someone. It is a succinct and very persuasive summary of your offering. You will need to have a ready answer when a prospective client asks, "What do you do?" This core understanding underpins the whole of your marketing efforts. Needless to say, it takes considerably more effort to create a brief statement than a long one!

### Promoting Expertise

The next step is to convey your key marketing message actively to the marketplace. You will already be used to some promotional methods because they form part of your research dissemination activities although not done with the marketing of your consulting expertise in mind. Other techniques will be new to you. Here are some ideas:

#### Networking

Probably no form of marketing is more important in consultancy than networking. The idea that, 'It's not what you know, but who you know', contains a high degree of truth. Success in consultancy depends on uncovering needs that your skills can address, and having an extensive and good-quality network is an important part of this.

The concept of networking has considerable mystique. However you will already know instinctively that it is necessary to make personal contacts to promote your expertise. Networking is simply being active and effective in marketing your services in various ways, usually through events and personal approaches to others. It is important to remember that everyone has a network. These are simply the people that you know, each connected to the set of people that they know, etc. You will be looking to use, maintain and extend this network to maximise your chances of finding work, and will be concentrating on individuals who have, or have access to, connections in appropriate industries.

Even for those who are confident and comfortable in groups of people new to them, sometimes the prospect of networking at events can be about as thrilling as the thought of going to the dentist. In addition, networking to promote yourself, as opposed to your institution, can make you self-conscious. However do not be deterred. This way of doing business is perfectly natural and acceptable to the people to whom you will be seeking to promote your expertise. Don't be intimidated by the idea of networking being a major aspect of your total consulting activity. If you are reticent about engaging in such a promotional technique, there are many courses on effective networking which would help you a lot. You can get advice on courses from government supported organisations, such as "Business Link" ([www.businesslink.gov.uk](http://www.businesslink.gov.uk)).

Using your network does not mean asking directly for work – this usually just causes embarrassment. It is generally acceptable, however, to ask for advice (everyone likes to be asked their advice). So an initial step is to contact individuals you know, outline what you are doing, and ask for their advice. They may be able to refine your offering or to suggest companies or individuals to whom it would be of interest.

Your own institution will almost certainly have marketing staff and skilled networkers who may be able to help your consultancy activities. In addition, those responsible for marketing the institution's intellectual property will regularly be making numerous commercial contacts. Close relations with them may help to uncover relevant opportunities.

Nowadays there are many local and regional networking events designed to connect people. Your institution may run some, as do the local agencies, industry trade associations, local branches of the Institute of Directors or the Confederation of British Industry, etc. All of these are worth contacting to identify what is available.

When attending such events, it is important to maintain realistic expectations. You may expect to raise your profile and to make a few useful new contacts, but it is very unlikely that you will meet someone with a current need for your services. Nevertheless, the opportunity to meet potential clients in relaxed circumstances is extremely valuable. Persistent effort is likely to yield important returns. Most networking events hand out lists of attendees, which will help you identify specific individuals that you may want to make contact with. When doing so, it is also important to

remember that this is marketing and not a sales activity. Rather than tell people about what you have to offer, talk to them about current issues in their industry and discover their needs. Let such a discussion allow you to steer them to asking what you do.

It is important to maintain your network by keeping your name in front of people. There will, of course, be some individuals that you frequently meet at events, but in general more active processes are required. Do this by ensuring that your network receives quality articles, thought-pieces and general news and updates about your activities. In doing this, remember that there are legal constraints on the use of e-mailing lists, which are designed to prevent spam.

So – get well connected!

### Articles

One of the quickest ways to build awareness of your activities is through published articles. Not just in research journals, which build your career and are an excellent means of marketing too, but also in publications which your potential clients will read. These include:

- industry magazines and trade journals
- newsletters and e-zines for your clients' industry associations
- alumni magazines (remember your students and ex-students often have control of budgets too!)

The articles should be in plain English and show your awareness of industry issues and the role of research in addressing industry problems. You will be fighting a pre-conceived idea that researchers are more interested in ideas than in applications. Do what you can to dispel this myth when approaching magazine editors and offering them an article. For this you need to be clear on:

- what the article is about
- why it's new and interesting
- the practical benefits of the story to readers

*"Test the water"* first. Check to see if there is any interest in what you plan to write. If there is write it in a way that is likely to hold a reader's attention and make that reader want to call you. Don't just go off and write it. Ask



marketing staff employed in your institution and run it past a colleague and/or the editor of the publication.

It helps to get your article published in the “right” places with the “right” prominence if you can find a contact (a client or colleague) on an editorial board or industry association. Journals and magazines have a work plan for each issue and often run special topics.

### Case studies

Evidence that you have done similar work successfully for others in the past is the best means of persuading prospective clients that you will be able to help solve their problems. Services are intangible – a prospective purchaser cannot take them out of the box and look at them before buying!

A thorough case study will provide evidence of your ability to resolve commercial issues and will at least show an understanding of particular industries.

#### Case study content

- written from a commercial perspective by demonstrating an understanding of the nature of the client’s problem(s)
- sets out the distinctive nature of the resources you brought to bear to resolve the issue(s)
- clarifies the benefits, ideally quantified, that the client obtained, within an impressively short timescale

A case study should not address the benefits that *you* have obtained from the assignment. Although you may well have learned a great deal from it, clients will not be keen to pay for your education. It is useful, though, to point out that your experience, as evidenced by a number of case studies, has given you an excellent understanding of a particular industry sector.

Permission should always be obtained before releasing any commercially-sensitive information, including the client’s name. Even without such permission, however, compelling case studies can be written by generalising key details (e.g. ‘one of the world’s leading ...’, ‘a well regarded UK company’, ‘a major US corporation’, ‘a specialist producer of...’).

### Thought-pieces

The major consulting firms frequently produce 'thought-pieces', which are articles designed to establish that they are on the leading edge of thinking about a particular industry issue. They are generally able to produce considerable evidence to support their ideas, drawn from their experience with the leading players in an industry.

Whilst you are not in a position to duplicate this practice exactly, you will be frequently well-placed to describe the commercial implications of your leading-edge research. If a new field of research or new results in an established field are likely to have commercial applications, then an article on this subject, sent out to your network and 'published' on a website, will help to establish you as the authority in applying this research.

### Flyers

It is worth having short written statements, usually no more than one side of A4, about your key marketing message, your expertise and non-confidential examples of your work. A short list of clients is helpful if they are recognised names but first obtain permission to use their names in this way. You can give the flyers to prospective clients, make them available at relevant events, or leave them behind with clients after meetings. They are rarely effective if sent out by e-mail. They must give your contact details. It is perfectly acceptable for you to produce your own flyers rather than being professionally produced, although you should always print them on good-quality paper.

### Talks

Speaking at business and industry association events is a classic way of promoting your name and establishing yourself as an authority in a particular field. You must be able to speak clearly and in an entertaining manner. It is essential to know the nature of the audience and to ensure that your talk addresses issues of interest to them and illustrates that you have some practical ways to solve their likely problems. Factor in some demonstrations or audience participation, so that the members of the audience walk out with a strong impression of your capabilities to meet their needs.

Make sure that every member of the audience takes away something which means they can easily find you such as your business card, a summary

of your talk or your marketing flyer which sends them to your web site. Make sure that your contact details are on the last slide of your presentation.

### **Agents and Intermediaries**

It may be worth using agencies or brokers to access clients who wouldn't normally approach you to solve their problem, but who could use your knowledge. Agent's client bases will exceed your network. If you have a consultancy service which appeals to a particular market segment, agents can connect you with people in those areas, and often will do the selling for you, for a fee, of course.

Their contracts with you will often preclude you approaching clients to whom they have introduced you for a period. It's a matter of business etiquette and ethics, but it is essential that you respect that period. So declare those clients with whom you already have some past, current or prospective consulting relationship when you first meet any agent.

On a similar theme, it may be possible to work as an associate of an existing consultancy business. This provides them with expert resource without the corresponding fixed costs. They only pay you when you're working for them.

### **Direct Marketing**

The more tightly you can define your market, the more accurately you can target your marketing efforts. In some instances it may be worth approaching prospective clients directly. If you are active in expert witness work, it may well be worth making relevant law firms aware of your expertise. If you have experience of due diligence work, you could approach investment firms, venture capitalists or regional seed fund managers. More generally, if your work is sector-specific then promote your services to the key decision-makers in that sector. This means writing to identified individuals telling them of your services and track record.

In all cases the market will almost certainly be needs-driven. You may make these organisations aware of your services, and you should do so, but work will only result when they have a need.

### **Workshops**

These are small events arranged and controlled by you, your institution or a trade body etc. They enable you to present and discuss current and/or new

issues in sectors which can be addressed by your speciality. The idea is to bring together about 10 to 15 influential individuals from those industrial and commercial sectors who should be interested to hear about important developments and practical approaches to solve their challenges. They can be a mixture of old, existing and new clients but mostly they are aimed at potential new clients.

Workshops require extensive planning and are often held at hotel conference locations convenient to the targeted group. It is important to take advantage of the interactive part of the events so that you can e.g. mix over coffee to meet with individuals. Follow-up with each attendee soon after the event to see what their reflections are since this will be a chance for you to get into a deeper dialogue with them. It is unlikely that anyone will commission you for an assignment at a workshop but this should happen later once you have established what are the specific needs of the attendees and how you might help them.

You will have to budget for these and treat them as a marketing expense. Over time you will be able to evaluate how successful workshops are in generating new business for you or for maintaining existing clients. Many consulting firms and individual consultants do regularly use workshops for marketing their services.

### Website

Almost all consultancies, large and small, have a website. You should set up your own personal site. It will need to present a consistent message and cross refer or link to any other relevant sites(s). Your site needs to look professional, but this does not mean that it should be 'clever' in terms of appearance or special effects.

#### Key website information

Your site should provide at least the following information:

- your key marketing message
- some further details of the services you offer and of the type of clients to whom you provide them
- details of how potential clients can contact you

You may also wish to include:

- first-rate case studies (outcome-based and if you can quantify the value, then even better)
- testimonials from happy clients
- short articles in plain English about ideas or problems you solve (published or not)
- links to related sites and information (make sure these open in a new window, so your window stays in their browser until they close it)
- announcements of any networking events or workshops you are hosting or at which you are speaking

The best way to discover what works in websites is to spend a little time researching others. Search for a look and feel which works for you, and which represents the image you want to portray publicly. Clients will make assumptions about your ability from the website itself.

It is important, although frequently depressing, to use a search engine to attempt to find your site. You may find that membership of other organisations (particularly networks) will increase the chances of your site being found easily. Clients will find your site more easily when other sites link to it and when you update frequently.

Consider mentioning your consultancy expertise where you are already featured on your institution's website. If you do use such an opportunity to promote your services, ensure that you present a consistent message with your personal website, cross refer each site and arrange for them to link to each other. You should review these links periodically to ensure that they remain active.

You must check your institution's policy about using its website, or your own site, for your consulting purposes.

### Watchword

Marketing is an essential part of a consulting activity. Undertake it widely and consistently. Activity directed along one channel is quite unlikely to be successful. The bottom line is that prospective clients will not become aware of your consulting capabilities without consistent long-term marketing effort on many fronts.

Selling is the process of taking very early-stage interest from a prospective client through to an agreed sale with a legal contract. Many people think of it, at least in the UK, as a rather unpleasant, 'pushy' task. This image probably derives from being on the receiving end of individuals trying to sell commodity products to you. Selling your professional services, however, is an important and necessary skill.

## The Process

Literature and courses about selling are mostly concerned with selling products. They tend to divide the sales process into a number of phases frequently encapsulated in some obscure acronym, and to give role names to the various members of the client staff involved ('gatekeeper', 'sponsor', etc.). Do not become pre-occupied about using such terminology because as a research institute based consultant the value to you of such formalism is not high.

The key point about the sales process for services is that it is a dialogue, the objective of which is that you come to understand the client's needs thoroughly. This way the client becomes convinced that you can and should do the work. You need to find out what the client wants in practical terms too, e.g. outcomes, timescales and costs, and how you will achieve this, e.g. activities, reporting, key milestones.

A sales process normally begins when you have established in the clients' minds, through your marketing, a high degree of confidence in your expertise relevant to some issues they face. Then the client normally suggests that you may be able to help. Occasionally they start the conversation with details of current problems or challenges. You should demonstrate some familiarity with the issues or suggest some route leading to a possible solution. The next step is a meeting to discuss this further. If you have any doubts about whether you are talking to a senior enough person to commission work, consider asking who else needs to be at the meeting.

Before that meeting, learn what you can about the client from public sources and from any of your contacts. At the meeting ask the client to brief you on the problem or challenge. This is when you ask the basic questions that enable you to scope out the nature of the problem and, perhaps more importantly, its implications. An issue threatening the client's current











permanent, temporary and visiting research staff, research students and undergraduates, bound by a range of contracts or none at all, all mix freely. Accordingly give some thought to how you will maintain client confidentiality. Resolve matters such as who will work on the project and their contractual terms, access to equipment and to laboratories when work is in progress, and access to files (including computers and, possibly, servers).

You will find more guidance in Section 6. You may also wish to read “Intellectual Property & Confidentiality – A Researcher’s Guide”, available from the contacts listed at the beginning of this Guide.

## The Sale

Even if you receive news on a sale verbally, it is always good practice to confirm this in writing, referencing both conversations and your proposal.

The client may confirm the sale in writing, and in this case it sometimes happens that the confirmation note has the client’s terms of business on the back. These are usually more onerous for you than your own terms. Since clients often attempt to use standard terms for a wide variety of contracts, these terms may not be relevant or even be unacceptable. Note that the particular individual you have been dealing with may have little influence over the client’s legal or procurement departments. One approach is to write back thanking them for the authorisation but stating that the terms given in your proposal will apply; another is to attempt to negotiate the client’s terms into something more reasonable. Large corporations and government departments can be quite inflexible on this point. After all, it is hardly practical for them to negotiate and get legal advice on the terms of every small contract they enter into. At some stage it may be necessary to take a commercial decision about the level of risk you are undertaking. Seek advice on these matters.

**Example** The sale of a product development assignment was confirmed to the consultant by a formal order that contained the client's terms of business on the back. The consultant did not respond to this. During the project the client asked if the consultant could suggest possible suppliers of a certain component, which the consultant did, based on familiarity with the field and a desire to be helpful. The supplier failed to deliver, which ultimately delayed the product launch. The client endeavoured to recover the costs of this from the consultant, on the grounds that the consultant had recommended the supplier and the client's terms of business made the consultant liable for consequential damages. Although the case did not go to court, the dispute proved very expensive for the consultant.

Operating a contracted assignment or project requires active management on two fronts: managing the work that will be undertaken and managing the client. These are inter-related and we deal with each in turn.

## Managing the Project

### Planning

You will have planned the project in some detail in order to write the proposal. You need to confirm the actual resources and timescales once the project starts, particularly if some time has elapsed since agreeing the proposal. You must inform staff who will be working on the project that it has been commissioned by the client and ask them to confirm their projected availability and make bookings for any specialist equipment required. If you have overlooked any major issues then address them now.

There are numerous project planning tools available, each of which has its devotees. It is important to remember that these are merely aids. They can help you, but only you can manage your project. There are many examples of catastrophic consulting assignments that have used the best and latest project management tools, so be sure that you are very familiar with any sophisticated systems or methodologies. In contrast, a straightforward, valuable tool is the Gantt chart that shows the activities over time. Here is a simple example, as frequently appears in consultants' proposals:

#### *An example of a Gantt chart*

Event	Week number								
	1	2	3	4	5	6	7	8	9
Conduct Needs Analysis	✓	✓							
Consolidate and report			✓	✓					
Gather and analyse data				✓	✓				
Model new solutions					✓	✓	✓	✓	
Evaluate and adjust						✓	✓	✓	✓
Implement new system throughout organisation									✓
Write final report									✓
Meet with management team	✓	✓	✓	✓	✓	✓	✓	✓	✓

It is important to seek feedback from time-to-time to inform your analysis and the quality of your work and recommendations. It is good practice also to refer back to and modify the plan as the project progresses, in order to be able to recognise and manage any deviations in scope or time. The beginning of the project (or earlier) is a good time to consider opposing results, namely, success and failure and how project management can affect the outcome. Should you wish to know more about project management techniques, consider visiting the Project Management Institute's website ([www.pmi.org](http://www.pmi.org)). Also useful is [www.12manage.com](http://www.12manage.com).

It is essential to understand what the client will consider to be 'success'. Remember that it is the client's opinion and not yours that matters. Typically success will mean the resolution of some core problem or the delivery of key information, but timescales may also be vital. If the client genuinely needs a report by a specified date, then delivering a brilliant report the day after is a failure. Considering what success means in a specific project may help you focus your efforts on the tasks that are most important to your client.

Similarly, considering at the beginning how an assignment may fail will help you avoid this. Larger assignments may use formal risk assessment techniques. For smaller projects it may be sufficient to identify how the project may fail and then to take steps to minimise the chances of these happening. For example, if the project will fail if a particular piece of equipment is unavailable for a period, then book its use and check that it is not scheduled for any downtime. If any particular staff are needed to operate it, then check personally with them that they will be available and then re-confirm all of these points at intervals. Whatever your terms of business may say, your client is paying for the assignment to be successful.

### **Management**

Assignment success does not simply 'happen' but is the result of active project management. This means you need the information to make management decisions. You need to have some form of internal reporting that gives an update on progress against plan and early warning of any impending difficulties. Equally it is important to ensure that all staff working on the project contribute fully. Managing and motivating people encompasses the old advice 'don't delegate tasks, delegate authority' – by ensuring that individuals feel ownership of their part of the project and are fully committed to its success.

One of the most common causes of project problems is ‘mission creep’; a gradual change in objectives where you end up trying to manage a bigger, better or just different project to the one originally intended. It can be caused by success that can lead you to wish to do more: new discoveries may impel you to investigate issues outside the original brief, or the idea of “*what the project is really about*” may simply evolve over time. Changes in client or project personnel can cause changes in direction but these are often more easily noticed.

A very simple but effective way of combating this phenomenon is by deliberately re-reading the proposal at intervals during the project. Absurd though it may sound, even very experienced consultants can have selective recall about the remit of their projects. It may also be worth considering an approach adopted by many consultancy firms of appointing a project reviewer to work alongside the project manager. The reviewer is not closely involved in the project work – that is the strength of the role, but instead holds progress reviews with the project manager at intervals, referring to the original plan and proposal and actively enquiring about areas of particular risk.

Finally, remember to capture the outputs of each stage of the project in a way that makes the final reporting as straightforward as possible. Make sure that all staff engaged on the project understand not only what they are expected to do, but also how and when they are expected to deliver their results.

### **Quality**

Clearly your work and your report need to be of a high quality. There are many systematised approaches to quality, all designed to assure the quality of operations and outcomes, of which the best known are probably ISO9000 and PRINCE 2. These cannot be implemented ‘on the job’; considerable preparation and training are required to operate these systems and to achieve the necessary accreditation. Some systems are designed for manufacturing environments or apply specifically to large and complex projects. Lots of small consulting firms do not have any formal quality accreditations. It is unlikely that you would be required to have any such formal qualifications. In general you should be aware of the importance of quality, and what form it will take in the type of work you do. You should make particular efforts to ensure that all interactions with the client (including e-mails, telephone calls, and documents) display a high level of professionalism.

### Reporting

More sound projects are ruined by a poor final report than by any other single error. Assuming that the key deliverable from the assignment is a report, then you need to set aside considerable time to write and check it. Remember that the report is for the client's benefit, and should be structured accordingly. Rather than being a novel-like 'story of the project', the report needs to give the conclusions rapidly and support them by appropriately detailed evidence. You may want to give the answer, followed by some general reasons why you believe it to be the answer, followed by a detailed review of the methodology used and any necessary experimental results. Some of the latter sections can be written up as the project progresses – or better, the written output of the project work can be formatted in such a way that it will not need to be re-written for the report. Note that you may need to have access to all the project staff (to clarify issues, or to ask where they put the final version of their output) right up to the final project completion date.

In writing a report, and particularly in the sections on the key findings and recommendations, you should be careful to choose your words judiciously. There is a balance to be struck between clarity and caution. It is also important not to go beyond the facts. If, for example, you have been asked to check whether a material is fit for a particular purpose, it requires very high levels of confidence and certainty to state 'the material is fit for purpose'. It might be more prudent to say that 'the work we have done shows the material to be fit for purpose in that ...' and then list the reasons why you believe this to be the case. Remember, though, that the client will be looking for a short and simple answer where possible, and that excessive caution can undermine the value of your work.

Finally, you should, if at all possible, have your report read by someone who has not been closely associated with the project work before the client sees it. Only a fresh pair of eyes can see obvious mistakes.



**Example** A group of consultants undertook a literature review for a client. As the project progressed, they uncovered more articles of relevance and learned considerably more about the whole field. Their enthusiasm for the project grew into a determination to do their very best for the client – which meant that by the end of the project they had a huge and shapeless mass of material, which they struggled to organise into a coherent report. Ultimately, the client was disappointed with the deliverables and the project team were frustrated that they were unable to communicate all they had learned.

### **Further Work**

Professional consulting firms aim to build their businesses by selling further work to existing clients and they start on this goal early.

If you can see tasks relating to, but outside of, your current project that would benefit the client, you should certainly consider suggesting this during the course of the project. Only do this when you have established your ability to carry out the current project with some success, and always proceed carefully, taking the temperature of the water as you go and bear in mind the prospective benefits to the client.

### **Statutory Requirements**

Like all commercial activities, consultancy has certain requirements imposed on it by law. The specific details will depend on the nature of your work and are beyond the scope of this Guide. Some help can be found at the references provided in Section 7. Especially note that there are requirements on the keeping of business records, particularly tax records, as well as on accounting and financial reporting.

## **Managing the Client**

This is generally the less well undertaken of the two management tasks, but it is certainly as important as managing the project. Consultancy is a service business and irrespective of what the proposal or the terms of business say the primary objective is to make the client happy.

### Communications

Communication with the client takes two forms – the formal project communication at meetings and in written reports, and informal communication in between. Both are important.

Your project plan must include formal project meetings. At these you will report on progress against plan, remind the client of forthcoming activities and draw attention to any issues that may affect the future work. You can hold project meetings at regular intervals, and you can also call special meetings when you reach a particular milestone or achieve a key output. Progress reports may coincide with meetings, be sent shortly before the meetings or occur outside the meeting cycle. In general, short but frequent meetings are the most effective. There is no rule that requires a meeting to last an hour. However the meetings should always be held at a frequency and to a depth with which the client is content. Always keep the client informed!

Outside this predetermined, formal communication, there is considerable value in informal communications with the client. For example, an occasional, brief e-mail or call to give an update on progress may well represent the best return, in terms of client satisfaction, on any investment of your time on the project.

One of the issues that requires careful management, and can sometimes be the source of delay or under-performance, are actions required of the client. Some projects may require work to be undertaken by the client's people, or access to be provided to client staff, information or resources. This frequently does not happen as well as it ought. It is highly desirable to make contact directly with the staff involved well in advance; you should not assume that your client's internal communications will work smoothly. Make sure that your client is aware of any actions you take in this regard, and of any issues impending but always do so without implying any criticism of the firm or its staff.

Contact the client as soon as problems arise. Nothing will cause more damage than to attempt to conceal something that must, eventually, become apparent to them.

### **Invoicing**

Your proposal will have set out the charges for the work and their timing. Make sure you are clear where and for whose attention the invoices should be sent, and note that they will need to refer to some purchase order number or at the least to your proposal. Always put details of how you wish to be paid at the bottom of your bill (e.g. by cheque to the above address, or directly to a particular account number, by credit card, etc.). Include how quickly you expect your client to pay (in accordance with your terms of business) at the bottom of the invoice. If you offer incentives for clients who pay early, or charge interest for late payment, state this clearly.

Some clients' finance departments have difficulty with paying invoices except against explicit deliverables; where possible you should draw attention to what has been delivered so far. You will need to consult the finance department and then inform your client if there are any difficulties or delays in payment. Politeness is important even, or perhaps especially, with the most bureaucratic finance departments – you will often find that the staff are very helpful, but constrained by rules not designed specifically for your project.

### **Post-Project**

It is important and useful to stay in touch with your client after the project has completed, without the time involved becoming a significant burden. You may want to call after a few weeks or months to learn your client's considered view of the outcomes of the assignment, and to understand whether any recommendations have been followed up. You will, of course, be alert to the possibility of follow-on or other work with the client (without being too pushy). The easiest client to sell to is one that you have successfully sold to before.

If you have had a successful experience with a client you should ask if the client would be willing to provide a reference. When you have established a strong relationship over time, you might consider asking the client for advice on getting assignments with other clients. Whilst in general existing clients are willing to go some way to helping you, they will not be pleased if they think it likely that you will be working for competitors as a direct result. So be very sensitive about what type of help you request. You should, however, certainly regard key client staff as members of your network, including them on mailings about your activities.

### Possible Outcomes

Various issues and opportunities may arise when you undertake consultancy work over an extended period. These are part of the benefits that accrue to you and to your institution because of consultancy. Here are some of the key ones.

#### **Research Contracts**

One of the outcomes of consultancy is a growing familiarisation with a particular industry sector and with particular companies in that sector. Where you have completed significant amounts of work for one company, one possible outcome of that company's growing appreciation of the abilities of your institution may be the placing of a research contract. Even though it may be your efforts in consultancy work that have impressed the client, this is a relationship that belongs, by its nature, with the institution, although it is highly likely to involve your research group. You will need to discuss internally any continuing consultancy relationship with the client because there may be conflicts of interest to address.

Even where relations with an individual client do not develop in this way, your increased knowledge and expertise may assist your institution in winning research contracts in 'your' sector. Accordingly, you should maintain close relations with your institution's research contracts team.

#### **Intellectual Property ("IP")**

You can generate valuable IP during consultancy assignments, but this is not routinely the case and it can create problems of ownership. If you anticipate that the consultancy will generate new knowledge, then you should consider whether it would be more appropriate to carry out such work as research collaboration or as a development contract. As a general guideline, a consultancy assignment will use existing IP or expertise to solve a problem, design a system or process or to provide an expert opinion on a situation but not create new IP except for copyright in the report. Such assignments carried out by employees of research institutions will usually be short term and non-intensive; probably a number of days over a few months.

It is important to maintain contact with your institution's commercialisation arm and to ensure that any IP being created is properly registered and protected. This IP can form the basis of future income.

When you enter into a consultancy arrangement you are being paid not purely for the services (or occasionally products) which you are supplying and the level of expertise which you bring, but also the risk which you are assuming as part of the consultancy. It can be all too easy to underestimate the risk which you are taking on board. If you are engaged by a bank to provide consultancy services in relation to cryptology for a fee of £10,000 then you might assume that your risk is £10,000. However, if the advice which you give is incorrect and because of it the bank loses millions of pounds then your risk could be in the millions. As a researcher your reputation is everything. In addition to managing potential financial exposure, it is also important that your reputation is not tarnished through unnecessary disputes.

## Consultancy Contract

Your obligations to your client will be contained in your contract with the client. The contract does not have to be in writing to be binding. If the client says "I will pay you £X to do Y" and you say "yes", then that is a binding contract. As it is not in writing you may have disputes later on as to what was agreed. It is always better to have the contract in writing.

Just calling a document 'Heads of Terms' does not mean that it will not form a binding contract. If you are putting a proposal to a client or responding to a client's request for services mark all your documents "*subject to contract*" until you have a document with which you are happy and that contains all of the terms of the contract.

If you are dealing with a business they may send you standard terms of business. You do not have to accept these and you probably should not, as they will have been drafted to favour the business and not you. Sometimes businesses have their standard terms printed on the back of their letter-head or cross-refer to them on their letter-head. If you receive these, be clear in your own correspondence to point out that those standard terms do not apply to the arrangements between you, otherwise you might find yourself inadvertently bound by them.

Where the contract goes through various iterations make sure that each draft is distinguishable by either a version number or the date printed on it. That way there should be no confusion which document is to be the final binding agreement to be signed.

There are various ways of managing your risk in relation to your client, many of which can be dealt with in your consultancy contract.

**Deliverables** – As discussed in Section 4 you should be clear about what the deliverables will be. A lack of clarity can give rise to disputes between you and your client. So make sure that the details are as specific as possible. Whilst more general wording might appear to give you more flexibility, remember it is likely to give your client more flexibility to require more from you or to claim that you have not delivered in full. Avoid having to complete the work to *“the satisfaction of the client”*. Being specific and limiting the deliverables can limit your risk.

**Timetable** – Make sure the timetable has enough slack in it to allow for contingencies and so that you can impress and over deliver. Many consultancy agreements are relatively unspecific about the time for delivery. You may see phrases such as *“within a reasonable period”*. Do not commit to a specific time unless you are absolutely sure that you can meet it. If you fail to do so it may cost you money.

**Report** – As highlighted previously, you should take care when preparing your report only to make statements with which you feel absolutely comfortable and that you feel that you can back-up. Avoid sweeping statements. Before signing-off, always challenge the statements which you have made in your report in the same way as you would challenge, from an intellectual point of view, the work of another researcher. If your client acts on an incorrect statement, you could be liable and it might cost you cash and loss of standing.

Your report should indicate clearly who is entitled to rely on it and ideally the capacity in which that person is acting. The purpose of your report may be being given to support a particular transaction, such as a report on an invention which a venture capitalist is thinking of funding. In such a case make it clear that your report can only be relied on by the relevant parties in relation to that particular transaction. This is usually the client who commissions and pays for the work. You should also limit the publication of your report as that could increase your potential liability. This can all be agreed up front in your contract.

**Liability Limitations** – It is possible within the contract which you have with your client to limit your liability. If these limitations are set out in your standard Terms of Business then they have to be reasonable. In addition by law you cannot exclude your liability for death or personal injury caused by your negligence in providing the consultancy services. So if you give advice in relation to the construction of a building, which subsequently collapses and seriously injures someone because your advice was negligent, then you could in theory limit your liability for damage to the building but not for the injury to the person.

It is common within business contracts to limit liability for what is often described as “*consequential loss*”. It is better to make sure that you exclude loss of profit, loss of business and consequential loss, as not all loss of profit is seen as consequential.

You should put a cap on your liability, perhaps limited to the amount that you are being paid under the consultancy agreement. Sometimes a “*reasonableness test*” applies, if the consultancy fee is small and the potential risks are high, then a court might take the view that to limit liability to the level of the consultancy fee is not reasonable. In that case you have to ask yourself whether your consultancy fee should be higher to reflect the risk, whether a higher liability cap should be offered or whether you should be undertaking the consultancy work at all.

You should also consider limiting the time within which claims can be brought. As a result of the nature of consultancy work that might have to be a certain number of months after the client becomes aware that it has a possible claim against you.

However you limit your liability, it is important that the provisions in your contract are reviewed by somebody who understands these sorts of provisions. It is very easy to include limitations which inadvertently negate the limitation entirely because of the operation of law. There will be people within your Contract Services Office, IP commercialisation organisation or their equivalent who should be able to assist you in relation to such issues, as well as external professional service advisers.

**Insurance** – There will always be some risk which you will have to accept as part of entering into any consultancy arrangement and which cannot be limited. You should therefore look to have in place professional indemnity

insurance to cover the type of work which you are performing. The level of insurance required will vary depending upon the type of work, the industry sector and possibly your client. If you are providing consultancy services to a US-based client then your potential liability could be much higher. Insurers and professional bodies of which you are a member will be able to give you guidance on the levels of cover usually required. Your client may include a requirement in the contract for you to have insurance in place.

If you are providing consultancy services through your institution, then your institution will have insurance in place, but do check that it is wide enough to cover the type of services or particular piece of work which you are providing. As mentioned in Section 2, you should take into account the cost of your insurance premium when setting your fees for each consultancy assignment.

**Payment** – Remember that risk is not one way. If you commit to a fixed fee, are you sure that you can undertake the work within that fee? If not, you will make a loss and so you may be better off with hourly rates.

You run the risk that the client may not pay you! This may not have anything to do with the work which you have carried out for them. Whilst it is flattering to be asked to carry out consultancy work, you should generally either know the client or have looked into the client's background. Check that it has the financial means to meet your fees.

You should have clear provisions in the contract as to how and when they pay you. Do you have to charge VAT as well (see paragraphs on p42 and p43)? It is common to include in the consultancy contract a provision allowing you to claim interest if payments are made late. You should also have the right to suspend the provision of the consultancy services if you have not been paid.

**Area of expertise** – Only undertake consultancy work within your area of expertise. Do not be tempted to stray beyond it. You may be able to use your networks to plug the gaps or simply tell your client that you are not able to assist them with such work. Whatever you do you will only increase your risk if you take on work which is outside your area of competence. Whilst some consultancy work might be lucrative, you have to ask yourself how it will impact on your reputation and the reputation of your institution. If you are a cancer specialist then you have to realise that undertaking consultancy work for a tobacco company may well have implications for future research funding from cancer charities for you and possibly your institution.



You should read your institution's Social and Ethical Policy for guidance.

If there are areas of work which you cannot cover but you are able to introduce your client to someone else who can cover that area, then it is better that your client contracts directly with the other consultant rather than them acting as your sub-contractor. If they act as your sub-contractor and fail to deliver then, whilst you may have a claim against them, your client will have a claim against you.

**Intellectual Property** – Clients may ask you to give them all the IP which you create as part of doing the work. As consultancy should really be about advice all they usually need is a licence to use the IP. In fact, if you produce your reports in a common format, by giving them the IP you could be giving them the format of your report, which in itself would stop you using it again. If they need more then maybe what you are discussing is a research contract rather than a consultancy assignment. If you are asked to give warranties in relation to the IP be very cautious. You should do no more than say that you have not copied the work. Inform the IP practitioners at your institution and seek advice from IP lawyers over any IP issues that arise.

**Non-compete** – You may be asked not to do the same or similar work for third parties. This might be acceptable if the period of the restriction is short and the definition of what you cannot do is very narrowly drawn. Remember however that you are being engaged because of your expertise and the client should not be able to stop you from doing your everyday research.

**“Tricky standard phrases”** – Contracts sometimes contain words of which you may not fully understand the implications. If you see the words *“time is of the essence”*, this means that if you do not do something by the specified date your client can terminate the contract immediately.

You will often see a contract saying that you will use your *“best endeavours”* to do something. *“Best endeavours”* is extremely onerous. It is generally considered that this obligation is not limited by considerations of commercial or financial reasonableness. So it can mean you spending a lot of time and money to comply however unreasonable you may think it.

Many people use the words *“reasonable endeavours”* on the basis that they are less onerous than *“best endeavours”*. There is however little case law

to support this view. If the view is correct that it imposes a different level of obligation, it is difficult in practice to specify what actions will be regarded as meeting the different standard. If you get into debates over these words it is always better to think about what you would do in practice e.g. commit at least ten hours to doing something, and state that in the contract instead.

## Protecting your Institution

Even recognising that you may have been asked to perform a consultancy entirely due to your personal reputation, if you are undertaking the consultancy as a private consultancy rather than consultancy work on behalf of your institution, then you need to protect your own institution from risk. You need to make it clear that the consultancy contract is between you and the client and not your institution and the client. In particular, you should make sure that you do not use any of your institution's letter-heading in connection with the consultancy. You should state in all of your reports that any opinions and recommendations are yours and not those of your employer. Your contract should make it clear that your institution has no liability in connection with the consultancy arrangement and, ideally, your client should sign a disclaimer addressed to your institution confirming that it will not hold your institution liable for any work undertaken as part of the consultancy.

You may be using your institution's resources, be they equipment, consumables or other members of staff, to assist you in providing private consultancy services. If so, you need to be sure that you have in place the proper arrangements with your supervisor and institution for the use of such resources. In particular, if your institution is a charitable institution, you must pay in full for such resources, so it does not compromise your institution's charitable status.

## Tax

Undertaking consultancy work is viewed as running a business. So you have to consider all the sorts of issues that many larger businesses have to take on board. These may be issues such as liability to employees and health and safety issues, where applicable, but will definitely include tax.

As you will be supplying services then the amount that you charge for your work is potentially subject to VAT. You can find a basic “*Introduction to VAT*” on HM Revenue & Customs’ website ([www.hmrc.gov.uk](http://www.hmrc.gov.uk)). The supply of services is a taxable supply and if the value of your taxable supplies is over a specific limit then you will almost certainly have to register for VAT. You can check the current limits on the HM Revenue & Customs’ website. The penalties and interest which are chargeable if you fail to pay your VAT correctly are substantial. So it is important that you get this right. Again you should probably be able to get some initial help from your Contract Services Office, IP commercialisation organisation or equivalent.

If you undertake your consultancy work through your institution, then any fees which your institution receives and pays to you in respect of the consultancy will be subject to PAYE and National Insurance Contributions in the usual way. If, however, you undertake your consultancy work as a private consultancy, then the tax regime will depend upon whether you undertake the work as an individual (sole trader) or through an incorporated company. If the former, then the consultancy income is likely to be subject to Schedule D income tax. In the case of the latter the fees will be subject to corporation tax: remember that there will be further charges to tax as and when money is paid out to you from the consultancy company.

Your client may well require you to indemnify it against any tax which is payable by you. It is important to get proper book-keeping/accountancy support to make sure that you are complying with all your obligations in relation to tax.

## Specialised Forms of Consulting

As mentioned in Section 1, there are two types of individual consulting assignments – expert witness and due diligence – which command high fees because they are very specialised but at the same time they have particular rules to observe and risks associated with them. Let’s look at these in more detail here:

### Expert Witness

In most cases, as an expert witness in a Court case you will usually be asked to provide a written report, discuss your report with another expert (appointed by the opposing party in the litigation) with a view to narrowing the matters in dispute and subsequently to give evidence in Court and face cross-examination on your report and opinions. It is possible to be engaged as what is known as a single joint expert which means that you are appointed by both parties to the litigation, although it is more common to be instructed by one party. The rules which are in place seek to promote good practice amongst experts by imposing duties and a code of conduct which must be adhered to. It has been known for experts to be personally penalised for flagrant disregard of their duties to the Court and being made personally to pay costs in the litigation. It is paramount therefore always to be mindful of your duties during your engagement.

Perhaps the single most important point to bear in mind is that, at all times, your duty is to provide independent assistance to the Court by providing an objective unbiased opinion based on matters within your expertise. This duty overrides any duty owed to the party instructing you (and more than likely paying you). It should never be the case that you simply promote the view of the party instructing you. The acid test of your independence is to ask yourself whether your opinion would be the same were the other party instructing you. Your duty continues after the completion of the report, as an expert must inform the parties, and when appropriate the Court, of any change of view on a material matter within the report

When preparing your report for the Court, your instructing solicitor should provide you with clear guidance as to the format of the report and the specific requirements prescribed under the Court Rules. Briefly, the report should contain the following:

- give details of: (i) your qualifications and (ii) any literature or other material on which you rely
- state the substance of all instructions (written or oral) which are material to the opinions expressed in your report or upon which those opinions are based

- you must consider all material facts, including those which might detract from your opinion, and state the substance of all facts which are material to the opinions expressed in your report or upon which those opinions are based
- make clear which of the facts stated in the report are within your own knowledge
- say who carried out any examination, measurement, test or experiment used for the report, give their qualifications and state whether or not the test or experiment has been carried out under your supervision
- make clear:
  - if any issue falls outside your expertise
  - if you are unable to reach a definite opinion (e.g. if you have insufficient information)
  - if your opinion is qualified, what that qualification is
- if a range of opinion is given: (i) summarise the range; and (ii) give reasons for your own opinion
- contain a summary of the conclusions you have reached
- state that: (i) you understand your duty to the Court and (ii) have complied and will continue to comply with that duty

Finally, your report must contain what is called a “*Statement of Truth*” which is the following: “I confirm that insofar as the facts stated in my report are within my own knowledge I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion.”

Signing the report off with the “*Statement of Truth*” is not to be undertaken lightly. A person who verifies a document containing a false statement without an honest belief in its truth may be liable to proceedings for contempt of Court and may be subject to fine or imprisonment.

There are some other points which it is important to be aware of when instructed and which will affect your engagement:

- the timescales set by the Court (for provision of your report for example) are unlikely to be extended

- in addition to the Court Rules and protocol, your report should also comply with any professional code of conduct to which you are subject
- all documents and information given to you should be treated confidentially.

As a practical point, acting as expert witness can be profitable. You should agree your remuneration and terms of your engagement with your instructing solicitor at the outset to avoid any later disputes.

Finally, appearing in Court as an expert witness and facing cross-examination can be forbidding. Training is available for expert witnesses which includes “*mock cross-examinations*”. It is worthwhile investing in the training to ensure you are as prepared as possible for the experience!

## Due Diligence Work

In this specialised form of consulting service, a researcher is engaged to provide advice in the course of a significant financial investment, typically where an investor (such as a venture capital firm) is looking to make an investment in an early-stage business or where a large company is considering buying a smaller one. Frequently the purpose of the consultancy is to understand better the novelty or viability of the proposed investee’s technology. There will also be other reports, probably including legal and financial ones. There are particular challenges and risks in undertaking due diligence work, which are discussed here.

### Identify your client

It is important, and sometimes surprisingly difficult, to know who your client is. Generally there are two other parties involved – the prospective financier (often a venture capital firm, or ‘VC’) and the company in which they may invest (‘the Company’). The VC will quite often ask you to undertake this work, on the basis that you will report to the VC and that the Company will pay for the work after the investment has taken place. This is unsatisfactory for many reasons:

- they will not pay you for some time (because investment can be a slow process to complete)
- the VC may not have the authority to commit the Company to pay you
- most importantly, what happens if the investment does not take place?

It is best to work for the VC and for them to pay you whatever the outcome. You may feel able to accept an arrangement whereby the Company pays you if the investment takes place within a defined period and the VC pays otherwise, but be very sure of the Company's financial position before you accept any other arrangement and always get all parties to agree to the arrangement in writing.

### **Financial advice**

Do not give financial advice unless you are explicitly authorised to do so by the Financial Conduct Authority, as to do so may be a criminal offence. Make it clear that you will not be doing so. Rather, you will be advising on the originality or viability of the Company's technology, or the size of the market, or another technical task.

### **Risk**

Despite the above, there are particular risks associated with due diligence work. After investments are complete, virtually no attention is paid to any due diligence work unless something goes wrong. If, for example, it turns out that the Company's technology is not original or unique, and if that has (as it is likely to) a substantial impact on the value of the Company, the relevant due diligence report (yours) will be carefully reviewed. Some organisations may assume that, if they have lost substantial sums of money by acting on advice for which they have paid (as they see it), those responsible for such advice must be in the wrong and should be sued. The risk of this actually happening is often reduced by practical considerations. (Do you have the money to reimburse them even if they win the case?) Nevertheless do not rule out the possibility of legal action. Take particular care in phrasing of proposals and reports to avoid over-statement. The higher fees charged for due diligence work usually reflect the risk involved and the indemnity insurance costs.

### **Company input**

You will need, with the VC's permission, to run your initial results past the Company and to take account of their comments. There can be differences of opinion between the consultant and the Company about matters that may affect the Company's prospects of investment. You should give the Company the chance to correct any misunderstandings. It would be prudent to draw attention in your report to any outstanding differences of opinion.

### **Publication**

There is a particular issue about publication of your report. In a normal early-stage private investment (the type you are most likely to be involved in), there is no reason why your report should be seen by anyone other than the Company and the investor(s), and the VC should not have the right to publish your report. Unless the contract states otherwise you (or your employer) will own the copyright in the report. Where money is being raised from the public, (e.g. where the Company is being floated on a stock exchange), there will be a prospectus which is a public document. The results of your work may be included in this. So make a clear statement as to exactly who is entitled to rely upon your report. Undertaking due diligence for public fund-raising is a specialised business, and those who undertake it usually have considerable experience, specialised terms of business and good, expensive, insurance. Unless you meet these criteria, you should avoid it.



- Your employer's intranet for its Consulting Policy and Guidance Notes.
- Your institution's authorised Consultancy Company for all aspects of consulting.
- Your Contract Services Offices, Research Office, Business Managers and/or your IP Commercialisation Organisation for any specialist advice including guidance on IP and contracts.
- Your professional body for information, advice and guidance on consultancy and codes of practice and conduct and for managing conflicts.
- "The No-Nonsense Guide to Government Rules and Regulations for Setting Up Your Business", which can be ordered from [www.businesslink.gov.uk](http://www.businesslink.gov.uk)
- "Consulting Mastery" by Cindy Tonkin, ([www.consultantsconsultant.com.au](http://www.consultantsconsultant.com.au)).
- UNICO Guide to Consultancy Agreements ([www.praxisunico.org.uk](http://www.praxisunico.org.uk)) for sample contracts and an overview and explanation of key aspects of and issues with consultancy.
- Higher Education Funding Councils for various good practice reports and advice ([www.hefcw.ac.uk](http://www.hefcw.ac.uk)); ([www.sfc.ac.uk](http://www.sfc.ac.uk)).
- Appropriate accredited associations such as "The Institute of Consulting" ([www.iconsulting.org.uk](http://www.iconsulting.org.uk)) and "The European Federation of Engineering Consultancy Associations" ([www.efcanet.org](http://www.efcanet.org)) for networking, training and guidance.
- "Optimising Consultancy" – a good practice guide for institutions from AURIL and Universities UK, June 2001 ([www.universitiesuk.ac.uk](http://www.universitiesuk.ac.uk)).

# Consulting checklist

MARKETING	<b>Promote your expertise</b>	<ul style="list-style-type: none"><li>■ Write case studies, thought-pieces and articles</li><li>■ Produce a marketing flyer</li><li>■ Give talks and presentations at “industry” events</li><li>■ Network regularly</li><li>■ Create and maintain a website</li></ul>
MARKETING	<b>Presenting Information</b>	<ul style="list-style-type: none"><li>■ Pass on your experiences and expertise in a captivating way</li><li>■ Make your message clear and memorable</li><li>■ Present findings – in writing, by ‘phone and in person</li></ul>
MARKETING	<b>Choose the work you want</b>	<ul style="list-style-type: none"><li>■ Know exactly what you have to offer</li><li>■ Confirm clients can afford what they need</li><li>■ Check you have the time required</li><li>■ Rate the benefits to yourself of taking the job</li></ul>
SELLING	<b>Taking a brief</b>	<ul style="list-style-type: none"><li>■ Prepare thoroughly for the meeting</li><li>■ Establish rapport with the client</li><li>■ Find out what clients really want and what constitutes value to them</li><li>■ Get a written brief</li></ul>
SELLING	<b>Contracting with the client</b>	<ul style="list-style-type: none"><li>■ Make sure your solution fits the client’s vision</li><li>■ Understand what constitutes value to the client</li><li>■ Talk about your fees</li><li>■ Create time lines and plans</li><li>■ Set up performance indicators and milestones</li><li>■ Include contingencies for time and costs</li><li>■ Ensure you have quoted the full costs: i.e. your fee, expenses, any additional or external costs, and any tax</li><li>■ Put together a written proposal</li><li>■ Negotiate, tailor and submit a legal agreement</li></ul>
SELLING	<b>Building business</b>	<ul style="list-style-type: none"><li>■ Make sure clients get what they pay for</li><li>■ Obtain feedback on your performance</li><li>■ Review what you have achieved and where you can do better</li><li>■ Discuss further possibilities with your clients</li><li>■ Get references</li><li>■ Ask clients to help you get work with others</li></ul>

OPERATING	<b>Other resources</b>	<ul style="list-style-type: none"> <li>■ Involve others to speed up the work</li> <li>■ Look outside of your field to bridge expertise gaps</li> <li>■ Schedule all necessary resources and book them well in advance</li> <li>■ Build a complementary package and know its full costs</li> <li>■ Understand others' personality types and their pressures</li> </ul>
OPERATING	<b>Planning and managing work</b>	<ul style="list-style-type: none"> <li>■ Analyse client needs and all data comprehensively</li> <li>■ Think critically about ideas, structures and systems</li> <li>■ Plan activities, timetables and resources accurately</li> <li>■ Check that planned resources are still available</li> <li>■ Organise the project to match your plan</li> <li>■ Manage the client's expectations</li> <li>■ Aim to beat deadlines</li> <li>■ Report on progress and seek feedback</li> </ul>
OPERATING	<b>Managing yourself</b>	<ul style="list-style-type: none"> <li>■ Manage your time</li> <li>■ Manage your stress</li> <li>■ Overcome inefficient patterns in how you work</li> </ul>
OPERATING	<b>Dealing with problems</b>	<ul style="list-style-type: none"> <li>■ Inform the client if there are difficulties with the client's people</li> <li>■ Tell the client if the project is behind schedule</li> <li>■ Be prepared to tell clients they are wrong</li> <li>■ Establish a client "champion" for your assignment</li> <li>■ Explain patiently when the client does not understand or like your ideas</li> <li>■ Recognise when you are part of the problem and adapt</li> </ul>
MANAGING RISKS	<b>Protecting yourself</b>	<ul style="list-style-type: none"> <li>■ Get necessary prior permissions to perform the work and conform to all your institution's rules</li> <li>■ Get guidance from professional advisers and your institution, as appropriate</li> <li>■ Check your insurance covers the job</li> <li>■ Check your tax position</li> <li>■ Check Health &amp; Safety implications</li> <li>■ Limit your liability</li> <li>■ Declare all interests and state any possible conflicts</li> <li>■ Get a signed contract before you start</li> <li>■ Keep first class accounts, records and files</li> <li>■ Make sure clients pay you – invoice as you go</li> <li>■ Honour all confidentiality commitments rigorously</li> <li>■ Send a final report and state who can rely on it</li> <li>■ Do not compromise your reputation to get a deal</li> </ul>

