

Guide to Terms for Engaging Freelancers

Appendix to 'Contractual and Payment Terms for Author Appearances'



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Introduction

We are sending you this guide to clarify the legal situation and expectations when engaging authors and illustrators for appearances to deal with the most common questions we encounter. Do feel free to contact the SoA with any queries.

1. Payment

1a. The fee: Authors should to be fairly paid for any commissioned use of their time, in addition to expenses. Authors work as freelancers, and make their living from sharing the expertise and wisdom you are seeking to engage, Fees should take into account travel and preparation time as well as actual performance time. The negotiation of fees is a matter for individuals and will depend on many variables including the nature of the event. Please refer to the detailed guidance on fees, including Andrew Bibby's Ready Reckoner which equates daily freelance rates with different salaries, at www.societyofauthors.org/advice/rates-fees

Payment should be made within 30 days of the event.

The SoA strongly believes that authors should be paid for all appearances, for the following reasons:

- A talk involves preparation and travelling time, so for the author an event will rarely take up less than a full working day in practice;

- Authors earn their living as freelancers. If you are asking the author to give up a day of their time for professional purposes, it is only fair to pay for that time – all other service providers are being paid. There is even less justification in not paying a decent fee to the author if you are charging people to attend.

1b. Expenses: The author's travel and subsistence expenses should be paid, preferably in advance, and the event host should provide overnight accommodation where necessary.

1c. Invoicing requirements: In order to avoid misunderstandings, delays and wasted time, agree your invoicing requirements with the author at the time of engagement e.g. whether the author should submit an invoice, what reference/identifier number should they use, to whom and where it should be sent, and whether the author needs to supply receipts.

1d. Cancellation policy: If you cancel the event, the author (who will have set aside the time, prepared their presentation) should be paid in full. If the booking is conditional, that and the size of any cancellation fee must be clarified at the outset e.g. if you cancel more than six weeks before the event, the author will be paid 50% of the agreed fee, plus any out of pocket expenses already incurred. (If the author cancels, neither fee nor expenses would be payable. But if the author is unavoidably prevented from reaching the event by weather or any travel-related incident outside their control, we would expect them to be reimbursed for all pre-booked costs.)

2. Tax and National Insurance

2a. Most authors are self-employed (even where they invoice as a limited company) and a one-off engagement does not create a contract of employment. To quote the HMRC Employment Status Manual (section 4502): *'a visiting lecturer who gives a one-off talk or short series of talks on a subject about which he or she has specialist knowledge... is likely to be self-employed.'* gov.uk/hmrc-internal-manuals/employment-status-manual/esm4502

2b. Neither tax nor NI should be deducted from the fee or expenses paid to a self-employed author.

2c. A one-off engagement does not amount to employment, so proof of the author's self-employed status should not be necessary (and our understanding is that no definitive form of proof exists). But local authorities sometimes request proof. It should be deemed sufficient for authors to be asked to warrant that they are self-employed and give their tax reference number.

2d. Authors who do a great deal of work for a single local authority (e.g. some children's authors) may have registered as a supplier with that authority, which can simplify the payment procedure.

3. Why freelance authors should not be paid via the payroll

3a. It is incorrect to do so.

3b. It will cause problems in terms of the author's tax return and increase their risk of over-paying NI.

3c. Payment via the payroll causes problems and confusion if the author is VAT-registered. It has proved very hard to get definitive guidance but our understanding is that if a self-employed author is paid via the payroll, the transaction falls outside the scope of VAT, and VAT should therefore not be added to either the fee or expenses. If the author is VAT-registered they are legally obliged to submit a VAT invoice, and it should be paid - but a credit note will need to be issued by the author if payment is made via a payroll. See point 5(b).

3d. Administrative complications can also arise if payment is made via the payroll and distinguishes between fees and expenses. If that situation arises, the author probably has little option but to be paid a single 'total package' sum even though it may mean they will have to pay tax on the expenses.

4. VAT

4a. If the author is VAT-registered, they are legally obliged to charge VAT on top of both their fee and expenses. Even if the host organisation cannot claim back the VAT itself, it is not acceptable that an author's payment be deemed inclusive of VAT - which would mean that, in return for undertaking the same work, VAT-registered authors are paid less than those who are not VAT-registered.

4b. If the author is VAT-registered but you are unwilling to add VAT to the cost of expenses the author has incurred, the problem can be solved if you and the author agree, in writing, that the author is incurring those costs on your behalf. The author then passes the VAT invoice to you to allow you to deal with the VAT accounting, and you then reimburse the author for the amount which they have expended (e.g. in buying a train ticket) on your behalf. For further information see www.hmrc.gov.uk/vat/managing/charging/reimbursements.htm.

4c. Teaching rather than giving a talk: a supply of private tuition is exempt from VAT provided it is a subject ordinarily taught in a school or university and is given by an individual teacher. Therefore, in theory, an author who is a sole trader could in some instances qualify under this exemption - so long as HMRC accepts that they are in this context a teacher.

5. Pension Scheme Auto-enrolment

5a. Some organisations (such as universities and colleges) are required to auto-enrol a freelance visiting writer onto their pension scheme if the writer meets the definition of a 'worker'. A worker is defined by HMRC as *any individual who works under a contract of employment (an employee) or has a contract to perform work or services personally and is not undertaking the work as part of their own business*. Self-employed authors, who are carrying out any such work as part of their profession and not as part of an employment, do not fall within the definition of 'worker'. gov.uk/employment-status/worker

5b. Even if an author meets the definition of 'worker' as a matter of law it is allowable to postpone auto enrolment for three months (thepensionsregulator.gov.uk/postponement.aspx) so most authors should not be enrolled. If an author meets the definition of 'worker', and the period of engagement is over three months (a three month postponement is written in to most auto-enrolment schemes) they are still entitled to opt out of auto-enrolment if they so wish, and the engagement should not have any impact on e.g. the Teachers' Pension Scheme.

teacherspensions.co.uk/members/faqs.aspx

6. Legal requirements

6a. Authors visiting local authority-run schools are required to have professional liability insurance (PLI), and this is increasingly a requirement of other event hosts. If you have such a requirement, it must be made clear at the outset (and authors can be referred to the SoA for further information on PLI). You as the event host must ensure that, in accordance with a condition of such insurance, the author will be accompanied at all times and will not be left alone with children under 18 or vulnerable adults.

6b. If the author will be required to produce ID, clarify at the outset what is acceptable, especially if it has to be photo ID. Will their picture on the cover of a book or on their, their publisher's or their agent's website suffice?

6c. There should be no request that the author has DBS (Disclosure and Barring Service, formerly CRB) clearance. Such clearance is needed only when there is '*Teaching, training or instruction of children, carried out by the same person frequently (once a week or more often), or on four or more days in a 30 day period, or overnight.*' (<http://bit.ly/2jygzoa>)

7. Rights

7a. Copyright and privacy

The law of copyright and people's right to privacy mean that photographing (other than for private, personal use) or recording an event needs the consent of all those featured.

When an event is recorded, the individual speaker owns the copyright in that material, while the recording institution owns the copyright in the recording as a whole.

If you wish to take photos (e.g. of an event in a school), or to make a recording of the author's talk, or to publish or disseminate it more widely, that - and the detailed arrangements - must be conditional on the author's consent from the outset. Authors may be unwilling to agree to such wider use e.g. if they feel it will inhibit them, or if the presentation is one they use regularly or could quickly go out of date.

7b. If an event is recorded

7b(i). The author's fee should reflect this wider use of their presentation;

7b(ii). The recording should credit the author as copyright holder of their presentation;

7b(iii). The institution's use of the recording should be under limited licence terms. For a festival, this could be a non-exclusive licence for [two years] for promotional purposes only; for schools and colleges maybe a non-exclusive licence for classroom use of the target year groups only at that specific institution for [two years];

7b(iv). The author might request the right, likewise, to include the recording on his/her own website for [two years], crediting the institution as its source;

7b(v). You must ensure that you have obtained permission to include any featured copyright content (e.g. quotations or images) and that such items are clearly credited;

7b(vi). A copy or link to the recording will be sent to the author, and any editing of their performance must be subject to their consent.

7c. Restraint of trade

The author should not be restricted in what other appearances they might want to give by any exclusion of location or time - unless the author agrees to such a restriction at the outset and is paid compensation in full for the lost opportunities. There is no reason to believe other events have an impact on event attendance or ticket sales, and such restrictions may prevent an author undertaking a book tour.

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