

Dramaturgs' Network

Introduction to Guidelines for Freelance Engagements

Overview

This document is an introduction to a suite of five other documents which comprise the guidelines for self-employed dramaturgs when negotiating a contract for services. The other documents in the series cover what should be included in the contract, a contract template to help you draft your own contract or check what is in a contract that you are given and schedules of tasks relating to (i) new drama development, (ii) production dramaturgy and (iii) devised work, i.e. collaborative processes and research and development.

These guidelines have been drawn from a project developed during 2019 by a d'n Working Group: David Harris, Katalin Trencsényi, and Jarkko Lehmus. The group built on the outcome of a series of discussions with the Independent Theatre Council and the Writers' Guild of Great Britain from 2015 to 2018 which were led by Penny Black and which were trying to remedy the fact that there was no existing, industry-wide contract (or rates) in the UK for dramaturgs. Having further consultations with Stage Directors UK, the Society of Authors, and Equity, the guidelines were created to help self-employed dramaturgs, when negotiating their contracts with theatre organisations. This suite of documents comprise information and not advice.

The task schedules are to help you gain more information about the range of work and can be used for more complex engagements to clarify the services required. The services are arranged in three levels according to the complexity of the work and the expertise necessary to complete it: Basic, Standard and Specialist. The fees should reflect the complexity of the work and the expertise required for the particular engagement.

Context

The first dramaturg/literary manager in the UK (Kenneth Tynan at the National Theatre) was appointed in 1963, over half a century ago. Since then freelance dramaturgs (ie. dramaturgs not employed by theatres or educational organisations) have not been able to rely on any regulation of fees or working conditions. Over the past fifty years, dramaturgy in the UK has been a slowly emerging profession and still does not have a set of specific disciplines. At best, freelance dramaturgs are regarded as fellow theatre-making practitioners and have been dependent upon the goodwill of director and manager colleagues. Regrettably, goodwill has on occasions led to exploitation in terms of hours worked and fee levels and sometimes in terms of acknowledgement of creative contribution. The dramaturgs' situation in the UK is still very precarious with no recognised trade union for their support.

In the UK dramaturgs fall under one of the following three types of employment: employee, worker, or self-employed/contractor. Please see the [HMRC website](#) for further details. These d'n documents provide guidance for dramaturgs working as self-employed or contractors.

The nature of freelance work is changing as the following two examples illustrate. In June 2018, a self-employed plumber who was VAT-registered and self-employed for tax purposes was deemed to be entitled to workers' rights because he had been engaged solely by one organisation for six years. He was deemed to be entitled to both holiday pay and sick leave. We are all familiar with the Uber case at the beginning of 2019: the Court of Appeal upheld a decision that Uber drivers are workers and not self-employed contractors. The basis of their decision was that Uber exerted a high degree of control over their drivers.

It is not likely that dramaturgs would fully satisfy the criteria in either of these well-publicised cases, i.e. be engaged by only one organisation for six years or undertake one task repeatedly for one organisation but these cases are indicative of changes in what is now called the 'gig economy' and what used to be known as the secondary labour market.

What is the gig economy? In business terms, it is a labour market characterised by the prevalence of short-term contracts or freelance work, as opposed to permanent jobs. Many of those working in the gig economy consider it a form of exploitation with very little protection in the workplace or access to holiday pay, sick pay and pensions. Workers in the gig economy are classed as independent contractors but the cases cited above show that this concept is open to challenge.

The gig economy is so called because it referred originally to self-employed musicians who called their engagements 'gigs'. Couriers, tradespeople and information technicians are perceived to be the core of the gig economy, but it also includes musicians and video producers and, of course, some dramaturgs.

The likely terms of engagement of freelance dramaturgs are similar but there is one key difference. Dramaturgs are most probably to be found working in subsidised theatres where managers and producers are dependent upon grants from the public funding bodies, either via the Treasury or the Lottery, from sponsorship and from grants from a range of trusts and foundations. The level of public funding and the pressure for self-generated funding can vary greatly between different organisations. Very rarely do even senior creatives earn substantial sums or have access to benefits equivalent to their colleagues in the commercial sector. It is essential therefore that dramaturgs receive the income and recognition for their expertise that other senior creatives enjoy. Even in the commercial sector, investment in productions are high risk and fees to the cast, stage management and creatives are usually as low as is feasible to allow a production to be mounted. Supply and demand also play a part in depressing fee levels. It is no secret that there is an ever-growing supply of performers, stage managers and creatives. The supply appears infinite, but the demand is limited. Not for profit theatre companies are dependent upon grants and philanthropy: the former is reliant on government policy and the latter means competing with pleas from charities and research bodies. The result, as we all know, is a limited number of projects. It is in this

environment that dramaturgs are seeking recognition, acknowledgement for their expertise and fair terms of engagement.

Dramaturgs fulfilling freelance engagements are self-employed; they would satisfy the [tests applied by HMRC](#): they are responsible for the financial success or failure of their work; they can decide what work they want to do and, for much of the time, when they want to do it; they have to make good any work deemed to be unsatisfactory; they agree to work for a fixed price; they use their own tools; they cover their own operational costs and they can work for two organisations at once. But, as we have seen with the plumber, this does not mean dramaturgs will not be outside the scope of rights normally associated with employees. There may be instances where they are classed as workers.

Intellectual Property

The concept of intellectual property (IP) has often featured in our discussions with other organisations. Despite making a creative contribution to a production, dramaturgs rarely retain any copyright in their work. Traditionally, the playwright, writer or author retains the copyright in the text and this is supported in law and defended by those organisations representing them. At present, there is little acknowledgement or recognition of the nature of collaborative work and the dramaturg's creative contribution to the theatre-making process. In preparing these documents, we have taken the view that generally the dramaturg is a creative expert who will not retain any IP in the vast majority of situations. We are aware that the industry is working towards acceptance of the practice of a more collaborative approach. The d'n is striving to ensure that the future contracts and remuneration would better reflect the reality of contemporary theatre making and for the IP of dramaturgs to be recognised where possible. As the following two cases illustrate, the law has yet to follow.

Rent (by Jonathan Larson), a musical loosely based on Puccini's *La Boheme*, was workshopped off-Broadway in 1993. A full production followed in 1996. The show came to London and was also made into a film. The dramaturg, Lynne S. Thompson, asserted that she had substantially re-wrote the show after the workshop production and twice sued the Estate of Jonathan Larson who wrote the book, music and lyrics. She lost both cases. Those administering the Estate eventually made an out of court settlement and agreed that she should be credited as the dramaturg. You can find further information through this [link to the New York Times article](#) about the case.

A case in the UK which went to appeal set out eleven steps to determine joint authorship but is still not resolved. Nicholas Martin, a writer, was living with Julia Kogan, an opera singer, when he wrote the screenplay for the film about the singer Florence Foster Jenkins. Kogan claimed that she provided ideas for early drafts of the screenplay. Martin brought an action to establish that he was the sole author and Kogan counterclaimed that she was joint author. Both cases centred around the nature and volume of Kogan's contribution. The cases were initially heard in the Intellectual Property Enterprise Court (IPEC). Subsequently the Court of Appeal set aside the judgement and ordered a re-trial in the IPEC.

Further and more detailed information about the cases are available [on the website of Bristow LLP](#), a law firm specialising in copyright matters.

Of interest to dramaturgs is the Court of Appeal's position that non-textual contributions if made from a person's intellectual creation in a collaborative setting could qualify as joint authorship. Perhaps the IPEC re-trial will determine the position.

We are very much aware of the issue where dramaturgs are contributing artistically, but having no IP rights. The d'n is currently not in the position to resolve these problems; we can only highlight them.

Recognition and Acknowledgement vs Exploitation

These guidelines are intended to assist freelance dramaturgs consider all aspects of their engagement whether it is for half a day to read some scripts or for six weeks to work alongside a director and writer in the preparation of a new play or the revival of a classic. Enthusiasm for and participation in a creative project can easily lead someone into working without formally agreeing terms or to accept an engagement from a director or producer before learning the full terms and conditions from the organisation's administrator.

Many mid-career dramaturgs work regularly with the same directors, writers and producers. There is often an implied sense of partnership with a high level of intrinsic motivation which can easily lead to unconscious exploitation. The recognition that comes with repeated working with a few fellow creatives should not prevent a dramaturg asking about fees and terms and conditions before accepting an engagement. The satisfaction that comes from the acknowledgement of doing a good job should not mean low fees. If skill and expertise are being recognised, then there should be a commensurate fee level. Directors and writers are likely to have residual rights in a production. If a dramaturg's contribution is being recognised, then he or she should also be included in the royalty pool in a commercial production.

Fees

The Dramaturgs' Network is not a trade union and has no power to make an individual organisation or a managers' association such as the Independent Theatre Council or UK Theatre negotiate a collective agreement with us. As freelance dramaturgs are self-employed, there is a view that any attempt to agree fee rates could be deemed contrary to anti-competition legislation. However, some of the larger organisations who maintain this view are representing self-employed writers and directors themselves, so the situation is not clear cut. We believe there is nothing to prevent us from setting our fees but other parties would not want us to do so. This is a complex legal issue and for that reason, we would like to work towards providing "observed" rates derived from information given by members.

Fees should reflect: the task and the preparatory work required; the level of the services (Basic, Standard, Specialist) required; the impact of the work; the skills & expertise of the

individual dramaturg and consideration of the proper amount of working hours needed to complete the task. The service levels: Basic, Standard and Specialist refer to tasks in the three schedules: new drama development; production dramaturgy and devised work. While fee levels should take into account the amount of time, essentially it is the value of the dramaturg's contribution that is important and should be the key factor in setting the remuneration.

Current and new members of the d'n are being asked to provide information on the fees they have been paid for freelance engagements. In the future, we want to provide data on observed rates that dramaturgs have earned which will be of use when an individual dramaturg negotiates a fee. They will be able to pitch their own fee with reference to those rates taking into consideration their own experience and what a specific engagement involves.

Creative processes are highly flexible and often fluid. The role of a dramaturg on a specific production may be defined at the outset only to grow and become enlarged as the work evolves. If you use the task schedules, you will be aware when your participation in the project has stepped outside what has been agreed. At that point, you will need to make clear that you want to negotiate an additional fee.

A further element in agreeing a fee for an engagement requires a calculation of what the hourly, daily or weekly rate you have been offered really means. As a freelancer, you are responsible for a range of costs which would otherwise be covered by an employer including equipment, office furniture, sick pay, holiday pay, pension and insurance. Writer and journalist, Andrew Bibby, has produced a [UK Freelance Ready Reckoner](#) to assist freelancers calculate a fee rate equivalent to compensate for these additional costs. If you find that this exercise will price you out of an engagement, at least undertake the equivalent of the following calculation:

Given there are 52 weeks in a year and a working week is deemed as 35 hours, a fee of £30 per hour may appear to be equal to £54,600. But it isn't. If you were an employee, you would be entitled to 196 hours holiday or 28 days including statutory holidays. That reduces the annualised fee to £48,720. From your £30 per hour, you will also have to pay National Insurance and provide for a pension and medical insurance in case you are unable to work. For 2019-2020, National Insurance for self-employed persons profits are 9% of profits between £8,632 and £50,000 plus £3 per week if profits are in excess of £6,365. Returning to our lower annualised fee of £48,720 and assuming expenses/overheads of £3,500, the annualised profit would be £45,220. Therefore, the National Insurance would be £3,293 plus £156. This reduces the annualised fee after the assumed expenses to £41,771. If you pay 5% of your annualised fee into a pension that's a further deduction of £2,436. A pension is tax-deductible, but you still have to pay for it. The cost of income protection insurance will be dependent upon your circumstances but assuming it's £350, with pension contributions and insurance cover, your annualised fee is now £38,985. That means your hourly rate of £30 is really £21.42; that's a reduction of 28%. If you feel you should receive £30 per hour, you need to ask for a fee based on an hourly rate of £42.

One Size Does Not Fit All

Freelance engagements for dramaturgical services vary in length, content and complexity. All the issues covered in these documents will not apply to every engagement. It would not be sensible to agree on a fee for reading thirty scripts which included an uplift for income protection insurance, but for three months' work on the adapted text of a classic from creative concept planning to first public performance, you should seek the best possible terms and conditions.

Summary

In this suite of six documents, there are five others:

- Guidelines setting out what should be included in each contract clause;
- Three schedules setting out a range of tasks for basic, standard and specialist dramaturgical services for new drama development, production dramaturgy and devised work;
- A contract template

It has taken several years to reach the current position and during the period of our discussions, there have been developments in the rights of freelance workers which could have an impact in creative industries in the months to come.

This document has looked at two difficult issues: copyright retention and setting fee rates as well as setting out what needs to be considered when a fee is agreed including the danger of exploitation and the value of the dramaturg's expertise.

The aim of this Introduction was to give a general picture and show the complexity of the issues involved. The other five documents that belong to this package give more specific advice. We hope you will find them useful; they are all available for d'n members. If you are not already a member, you can join through the [d'n website](#).

If you have any suggestions for further development of this document, please send an email to: info@dramaturgy.co.uk

The Dramaturgs' Network is a volunteer arts organisation. Please consider supporting our work by making a [donation](#). Thank you!