

# Pay<sup>.</sup>ing

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# Artist

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An Arts Council policy on the fair and equitable remuneration and contracting of artists.



# Context to Policy

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Research studies indicate that the working and living conditions of artists remain below acceptable standards, with some artists reporting incomes below the national minimum wage.<sup>1</sup>

As set out in the Arts Council's current strategy *Making Great Art Work*, the improvement of living and working conditions — and, in particular, ensuring the fair and equitable remuneration and contracting of artists — is a key strategic objective for the organisation.

As the national development agency for the arts and as a major funder of the arts, we are committed to using our position to influence change. We do not see our role as one of setting rates of pay. Rather, our actions are focused on research, developing capacity, compliance with best practice, and advocacy. In delivering these actions, we embrace the complexity of the issue while also acknowledging the constraints and challenges faced by many organisations and individuals operating in the arts.

We acknowledge that pay is not the only issue contributing to the precariousness of artists' lives, however, if artists are not appropriately remunerated for their work, a career within the arts is not viable.

The distinct nature of individual artforms and their associated sectoral or industry practices means there are significant variations in how pay and contractual issues manifest themselves across different artforms and arts sectors. This policy will establish key principles that can be adopted across all arts areas and create a framework for future arts-area-specific policies, interventions or campaigns.

This policy complements and builds on existing work regarding dignity and respect in the workplace and the Arts Council's Equality, Human Rights and Diversity (EHRD) Policy.

Within this Fair and Equitable Remuneration and Contracting Policy, the Arts Council articulates its position and expectations with regard to remuneration and contracting within the arts sector.

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<sup>1</sup> The Arts Council/An Chomhairle Ealaíon and Arts Council of Northern Ireland, *The Living and Working Conditions of Artists in the Republic of Ireland and Northern Ireland* (2010); *Visual Artists Ireland, The Social Economic & Fiscal Status of the Visual Artist in Ireland* (2016); *Theatre Forum, Review of Pay and Conditions in the Performing Arts in 2018* (2019).

# Policy Statement

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The Arts Council, as the national agency with responsibility for the development of the arts, recognises its role in promoting equitable and fair remuneration and contracting within the arts. It also recognises that, for many reasons, certain practices have resulted in conditions that are not in line with this standard.

The Arts Council is committed to the principle of fair remuneration for professional artists. Remuneration is *fair* when it equates to what is asked of an artist in terms of their time, input and expertise. It will account for the status of the artist and reflect the value created by their engagement. We also emphasise *equitable* remuneration because we are committed to equality and diversity in the arts.

Remuneration is used here to encompass all potential forms of an artist's earnings. It includes pay, salary, wages, fees, allowances, benefits and non-cash incentives as well as income derived from rights or royalties. Contractual arrangements should mirror, transparently, the expectations or requirements of the engagement and set out the relevant terms.

The Arts Council recognises its role in leading change through undertaking and sharing research, through supporting developmental actions that improve capacity and transparency, through the requirements we place on funding recipients, and through our partnerships and advocacy work.

We recognise that we must work with artists and their representatives and the individuals and organisations engaging them to improve the current situation. We seek to create a culture of fairness and equitable treatment and an end to the situation of artists being underpaid or working for free in return for 'exposure'.

## Our commitment is informed by the following value-based principles:

- The Arts Council values artists: we value the work that artists create, and the way in which they represent and contribute to the cultural life of the nation. This value must be better reflected in how we pay artists.
- We aspire to the position that best practice, not minimum standards, should apply to remuneration and contracting of artists across all artforms and disciplines.
- An artist's ability to sustain a viable career within their chosen discipline is an essential feature of a healthy arts ecology. Improving standards in what artists are paid and how they are engaged is critical to this and, in particular, to ensuring a diversity of voices is represented within the arts.
- The underpaid or unpaid contributions of artists represent a hidden subsidy to the cultural life of Ireland; we recognise that this is unfair and unsustainable.
- We submit that where public funding is involved, fair and equitable remuneration is a matter of policy and prioritisation and, accordingly, should be factored into the budgeting process rather than being budget-dependent.

As the national development agency for the arts, the Arts Council asserts that this policy speaks to:

- i Our own direct engagement with artists;
- ii Those we invest in;
- iii Government and partners;
- iv Artists and individual practitioners.

# Scope of Policy

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## **i. Our own direct engagements with artists**

Outside of our funding processes, there are limited occasions where we engage artists directly. Such engagements might involve us programming artists to present or perform as part of promotional activities or for events such as Culture Night. We regularly invite artists to participate in peer panels or focus groups, or we may seek the use of artists' images for publication. For such engagements we commit to upholding the values and principles expressed in this policy. We have published a statement detailing our own practices on our website.

## **ii. Those we invest in**

Recipients of Arts Council funding are expected to pay artists fairly and engage them appropriately. The Arts Council requires arts organisations to provide clear statements on fair pay and to clearly identify payments to artists within their budgets.

An organisation's policy and approach to artists' remuneration forms part of the assessment criteria under all relevant funding programmes. In particular, we expect strategically funded organisations to show leadership and set an example within the sector.

Organisations and individuals engaging with artists have a duty of care towards them. Open, fair and transparent dialogue should underpin the terms of an artist's engagement. The Arts Council will expect organisations to aspire to the best-practice principles set out in this policy. Artists' remuneration forms part of the ongoing monitoring and reporting required through our grant programmes.

## **iii. Government and partners**

The Arts Council also recognises that, as the national agency for the development of the arts, we play a central role in leading on, and advocating for, fair and equitable remuneration with colleagues across government departments, agencies, local authorities and other organisations disseminating public funding to the arts.

It is with this in mind that we set out best-practice principles to provide colleagues with an appropriate standard by which to measure their remuneration and contracting processes so as to ensure fairness and equitable treatment.

We also engage with key public policy and legislative issues that impact on the earning potential of artists and on their working conditions.

## **iv. Artists and individual practitioners**

The Arts Council wants artists to be valued and to have the expectation of being treated fairly. We want artists to be confident, to know their worth, and to feel more empowered in negotiation and contracting stages of professional engagements. We intend this policy to play a part in encouraging artists to expect fair and equitable treatment.

We also encourage artists to ensure that they make provision for their remuneration when they are making applications to the Arts Council for funding.

Within this policy we use the term 'artists' in its broadest sense. A commitment to artists is at the core of our strategy, and we believe that the nature of arts practice leaves artists particularly vulnerable. While the focus of this policy is on artists, the principles it contains apply equally to other independent workers in the arts sector.

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The distinct nature of individual artforms and their associated sectoral or industry practices means there are significant differences in how pay and contractual issues manifest themselves across different artforms and arts sectors.

**However, we assert that certain best-practice principles can be applied to most engagements.**

# Best-practice Principles

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## In the following we set out best-practice principles for all those engaging artists:

- Ensuring that a policy and approach agreed by board and management dealing with all aspects of engagement with artists are in place and available to artists and published on the organisation's website.
- Being open, transparent and upfront in communications with artists to ensure clarity from both perspectives on the ask and the offer.
- Complying with rates, terms, practices and standards recommended by representative and resource organisations, and utilising available toolkits and resources to support the contracting process.
- Aiming for continued improvement in rates, acknowledging the low base from which current norms and standards are set and that minimum standards are not an acceptable ambition.
- Ensuring all engagements are covered by a contract.
- Ensuring that remuneration and contracts reflect the full scope of what an artist is expected and required to deliver.
- Ensuring that artists and/or their representatives have a voice in negotiating terms and conditions.
- Being clear about the nature and status of an engagement—i.e. whether the contract is an employment contract or a contract for services—as well as any associated tax, social-security benefits/obligations arising (e.g. holiday pay, PRSI, etc.)
- Ensuring that payments reflect and/or differentiate between fees and expenses, including per diems or other relevant payments.
- Being clear and upfront about how and when payments will be made; this should be set out in an organisation's prompt-payment policy.
- Ensuring that artists' fees are ring-fenced within project budgets so as to ensure they are protected against budget overruns in other areas.
- Ensuring that artists' copyright is respected, both in terms of moral and economic rights.
- Supporting artists to share in the economic life of what they create by ensuring that any contractual arrangements for artists to benefit from the future exploitation of their work are appropriate and proportional and reflect the value of what the artist has created.

**There may be occasions where remuneration does not apply. This may arise from genuine voluntary activity or from some form of legitimate value exchange. It is important to acknowledge this, but also to stress the need for clarity and the need for the rationale and approach to be clearly articulated by:**

- Outlining clearly the benefits and values associated with the engagement where payment does not arise but where specific professional outcomes are provided.
- Engaging openly with artists, ensuring their agreement with the terms of the value exchange and that they have full understanding and awareness of the rationale for the voluntary or non-paying engagement.
- Ensuring the engagement of volunteers is part of a clearly-set-out volunteer policy and is not in lieu of a staff requirement. Furthermore, ensuring volunteers are respected, properly trained and not asked to take on responsibilities beyond their experience.

# Legal and Legislative Considerations

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## THE LEGAL POSITION OF THE ARTS COUNCIL

The Arts Council is a statutory agency, and operates under the Arts Act 2003, which provides that the Arts Council should 'assist in improving standards in the arts'. This requirement is further stated in the Arts Council's current strategy Making Great Art Work.

In articulating key principles and a series of actions (see Implementation Plan), the Arts Council is setting out objectives for itself, colleague agencies and institutions, and the arts sector.

The Arts Council must act within its statutory powers, which do not include setting rates of pay or negotiating fee arrangements. It must also be cognisant of its functions under the Act and not offend the provisions of other legislation such as the Competitions Act 2002.

## EMPLOYMENT AND EQUALITY LEGISLATION

The Arts Council acknowledges key legislation underpinning employment practices, particularly, the Payment of Wages Act 1991 and the National Minimum Wage Act 2000.

The Arts Council's Equality, Human Rights and Diversity (EHRD) Policy, in accordance with the Employment Equality Acts 1998–2015, the Equal Status Acts 2000–15 and the Public Sector Equality and Human Rights Duty, asserts equality of opportunity and treatment regardless of gender, civil status, family status, sexual orientation, disability, age, race, religion and membership of the Traveller community. Furthermore, the EHRD Policy recognises socio-economic status as an additional ground.

# The Role of Representative and Resource Organisations

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The Arts Council acknowledges the role of representative and resource organisations in providing information and advice, including guidelines on rates of pay. We acknowledge that these organisations play different roles within their respective sectors. Some are mandated to act as representatives on behalf of their professional-artist membership, while others have a more general role as service providers or advocates within their sector.

We acknowledge the role and status of these organisations regardless of whether or not the Arts Council funds them.

On our website we list a range of relevant representative and resource organisations. We provide contact links and, where appropriate, identify pay rates, resources, toolkits, templates or guidelines that can be accessed through these bodies.

# Implementation Plan

Delivery of this policy forms part of the Arts Council’s three-year plan for 2020–22.

The following set of actions have been identified for implementation over the three-year period.

Research Actions				
	Actions	Desired outcomes	Deliverables	Timeline
1.1	Commission ongoing research into artists’ pay and conditions and the associated impact on artists and the arts sector.	Up-to-date picture maintained across arts areas to inform: <ul style="list-style-type: none"> <li>— Policy development</li> <li>— Monitoring and evaluation</li> <li>— Advocacy</li> </ul>	Research scoped and commissioned by end of 2020.	Q1 2020–Q4 2022
1.2	Initiate a review into the changing practices around employment/ contract-for-services arrangements.	Published report providing improved insight for Arts Council and the arts sector.  Informed engagement with public-sector bodies, including schools, local authorities, ETBs, third-level institutes, etc.	Report delivered 2020.  Findings shared and distributed through 2021.	Q1 2020–Q3 2021
1.3	In partnership with the Irish Research Council and others, create and invest in an opportunity to expand the scope of research into artists’ living and working conditions.	Improved knowledge around artists’ living and working conditions gained through deeper insight and a broadened perspective.	Options scoped and identified in 2020.  Research initiative commencing 2021.	Q1 2021–Q4 2022

# Implementation Plan

Developmental Actions				
	Actions	Desired outcomes	Deliverables	Timeline
2.1	Support key representative and resource organisations to review and update recommended pay rates/scales, and to develop or update relevant toolkits, information resources, template contracts, etc.	New and updated sectoral-led recommendations on pay rates/scales.  New and updated information resources available, particularly in areas of low capacity.	Representative and resource organisations engaged in dialogue to identify scope and remit.  Investment in capacity building and resource development.  Promotion and advocacy of outcomes.	Q2 2020–Q4 2022
2.2	Using the best-practice principles set out in the Arts Council's policy, support Strategically Funded organisations to develop and publish their own statements or policies.	Increased openness and transparency around engagement practices	Develop and pilot in 2020.  Review and expand in 2021.  Promote and monitor in 2022.	Q3 2020–Q4 2022
2.3	Incorporate a commitment to artists' remuneration within proposals (as published in our three-year plan) to support professional development and training programmes.	Improved information and advice for artists and those engaging artists.	Implement as part of three-year-plan programme activity.	Q1 2021–Q4 2022
2.4	Identify and address arts-area specific needs through artform policies.	Specific actions implemented at arts-area specific level to address bespoke issues and needs.	Incorporate within policy-development process across artform/arts-practice areas.	Q2 2020–Q2 2022

## Funding Conditions/Monitoring/Processing

	<b>Actions</b>	<b>Desired outcomes</b>	<b>Deliverables</b>	<b>Timeline</b>
3.1	Publish and announce a clear statement on our expectations and requirements for funding applicants and recipients.	Clarity established in regard to expectations and requirements for Arts Council-funded activities.	Statement issued with launch of policy and included within guidelines for all relevant funding programmes.	Q1 2020–Q4 2022
3.2	Ensure artists' pay forms part of assessment criteria for all relevant funding programmes.	Pay and conditions for artists engaged in Arts Council-funded activities continues to improve.	Continued reference to remuneration as key part of funding assessment criteria.	Q1 2020–Q4 2022
3.3	Ensure consistent information on artists' pay is captured at key stages in the grant-management process.	Capacity to monitor delivery is improved.	ICT systems allow Arts Council to capture and monitor information on artists' remuneration.	Q1 2021–Q4 2022
3.4	Actively monitor commitments set out in funding arrangements.	Commitments in terms of pay and conditions are delivered on as agreed.	Establish baseline in 2021. Monitor through 2022.	Q1 2021–Q4 2022
3.5	Utilise data captured through reporting mechanisms to monitor and report on overall levels of investment in artists through Arts Council programmes.	Aggregate data used to support and inform research and advocacy initiatives.	Establish baseline in 2021. Monitor through 2022.	Q1 2021–Q4 2022
3.6	Review artists' funding programmes to ensure they reflect principles and values of this policy.	Arts Council supports reflect artists' needs and align with best-practice principles of support.  Receiving an Arts Council award does not place undue financial pressures on an artist.	Internal review of processes and procedures.	Q2 2020–Q4 2020

# Implementation Plan

Advocacy Actions				
	Actions	Desired outcomes	Deliverables	Timeline
4.1	Incorporate our commitment to artists' remuneration within our advocacy-and-awareness campaign to champion the unique role of artists in a changing Irish society (as published in three-year plan).	Greater knowledge and awareness of standards, expectations and impact on artists' lives.	Social-media campaign. Implement as part of three-year-plan programme activity.	Q2 2020–Q2 2021
4.2	Advocate with colleague organisations at government (national and local), institutional and agency level to ensure enhanced engagement with best-practice principles.	Key partner organisations/ agencies aware of, and engaged with, Arts Council recommended best-practice principles.	2020: devise and deliver a process of engagement with CCMA, ALAAO, CNCI and interdepartmental working group on Per Cent for Art.  2021: extend to other key partners, including educational institutions.	Q1 2020–Q4 2022
4.3	Identify, monitor and engage with key public policy and legislative issues that impact on income-earning potential of artists and their working conditions.	Arts Council engaged in and influencing key issues impacting artists' earning potential.	2020: identify and engage with challenges arising from Brexit.  Engage with Department of Enterprise, Business and Innovation on copyright legislation.	Q1 2020–Q4 2022



**The Arts Council**  
70 Merrion Square  
Dublin 2, Ireland

**artsCouncil.ie**  
(01) 618 0200