

GUIDELINES FOR UNDERTAKING SELF-EMPLOYED PRACTICE AS AN HCPC REGISTERED ART THERAPIST

June 2019 – to be revised June 2022

INTRODUCTION

These guidelines (**updated June 2019**) are to help BAAT members who may already work or be considering working in a self-employed capacity on a sessional, independent or freelance basis (all these terms are inter-changeable, and we will refer to self-employed work to include all three). Since each member's situation and circumstances may be different, it is recommended that individuals should take advice from a qualified accountant, financial advisor, or a union representative on specific issues or matters of employment law.

Art therapists are expected to abide by the Health and Care Professions Council (HCPC) Standards of Conduct, Performance, and Ethics, and the BAAT Code of Ethics and Principles of Professional Practice, and other statutory requirements. It is also recommended that both HCPC and BAAT guidelines should be used to support and inform practice, and to assist decision-making. They also need to comply with the General Data Protection Regulation (GDPR) 2018.

EMPLOYMENT STATUS

There can be some confusion for art therapists/psychotherapists, when the term 'self - employed' is used,

It is important to clarify the employment status, however, as this will directly affect the rights of an art therapist. This status must be clearly defined in any letter of appointment, contract of employment or contract for services.

An **employee** (i.e. not self - employed) will be under the direct management of an organisation in relation to conditions of employment (e.g. hours of work, salary, leave entitlement, etc. It is likely that an employee will be paid directly by the organisation and have National Insurance, tax and student loan repayments (when appropriate) deducted at source. An employee has statutory employment protection rights such as the right to claim unfair dismissal, right to claim a redundancy payment and the right to maternity leave, parental leave and statutory maternity pay. These rights apply (subject to qualifying period) regardless of the hours worked or whether the contract is fixed term or permanent. All employees are also classed as workers.

A worker is a person who, for a period of time performs services for and under the direction of another in return for which he/she receives remuneration. This covers individuals such as casual and freelance workers who provide personal services under a contract, provided the other party to that contract is not a client or customer but an organisation. This however specifically excludes self-employed individuals who are genuinely pursuing a business on

their own account.

Workers can claim protection under discrimination legislation including part time workers legislation and the right to no less favourable treatment than that which is on offer for full time workers. Workers are entitled to holidays and sick pay.

Self-employed people *do not* have the same entitlements regarding terms and conditions in the way that **employed** people have. For example, the self-employed do not receive holiday, sickness or maternity pay (but may be eligible to claim Statutory Sick Pay (SSP) and Maternity Allowance (MA) dependent Level 2 National Insurance contributions which a self-employed person makes directly to the government – see www.direct.gov.uk). They usually have contracts with several organisations, and these are often time limited. Self-employed people are not on PAYE and they submit invoices (see section on invoice template below) and are not taxed at source. However, a few significant changes in law are expected in 2020 that will redefine the difference between employment and self-employment. BAAT will seek and share with its members specialist paid expert advice on how this will affect self-employed art therapists.

Self-employed workers are responsible for filing their own annual tax returns and for paying their own taxes and NI. Regulations require all self-employed people to register their self-employed status and to pay class II National Insurance contributions.

For further information and to register, go the Department of Revenue and Customs website www.hmrc.gov.uk

It is usually possible for a certain proportion of the expenses that are incurred in the course of their work to be offset against tax liabilities. For art therapists, this might include, for example: publications, subscriptions, professional indemnity insurance, travel costs, art materials (including framing), stationery, training and professional consultation (supervision), entrance to exhibitions, Continual Professional Development costs, books, postage, telephone and BAAT membership fees and HCPC registration fees. For Art Therapists who provide separate premises for seeing clients, they will be able to claim all the costs associated i.e. rent, electricity, water, heating etc. For Art Therapists who see clients at home, they will be able to claim a proportion of the above premises' costs, the proportion to be worked out on the percentage of room area used exclusively for self-employed work. The BAAT advises that you seek at the outset of self-employment additional guidance from the HMRC or from a qualified accountant who can advise (accountant's fees may be offset against tax).

DIFFERENCE BETWEEN PRIVATE PRACTICE AND SELF-EMPLOYMENT IN A SESSIONAL OR FREELANCE CAPACITY

Although private practitioners will also be self-employed in terms of their tax status, the BAAT differentiates between these statuses in the following way:

- In **private practice**, a contract for the provision of art therapy is agreed

strictly between a client and the art therapist. **The art therapist is paid directly by the client, and there is no treatment team or organisation involved in the client's care.** The art therapist works completely independently and usually within their own (or hired) space

- In **self-employed** practice in a sessional capacity, there will be a **team or organisation holding the duty of care for the client (s) and the art therapist will have colleagues to liaise with.**

Many newly qualified art therapists start their working lives as self-employed, sessional workers and this is how they build their work portfolio and their experience. Although the HCPC registration implies that any HCPC registered art therapist can work autonomously, the BAAT does not recommend that newly qualified Art Therapists take on private practice without having first gained some additional clinical experience working within organisations, either as employed or self-employed. This is in order to hone assessment skills and knowledge of all the statutory regulations that will also apply to private work, as well as strengthen the clinical skills needed to work completely independently.

The BAAT requires art therapists to have two years full-time or four years part-time of supervised clinical practice to be listed on its **Private Practitioners and Private Supervisors list**. This list is not a statutory register and private practitioners do not have to be on the BAAT list in order to practise. However, the list is for 'quality assurance' for members of the public who seek guidance from the BAAT and is a good source of referrals for those Art Therapists who are on it. **BAAT has also revised its supervision guidelines and members who wish to be listed as supervisors are required to have completed at least a basic training in supervision (please see BAAT supervision guidelines 2019).**

N.B. In the 'Direct Payment' system, in certain settings, some clients are choosing to purchase art therapy as part of their care package and pay the art therapist directly. If this work happens within the context of an organisation it can still be described as 'self-employed' work. The art therapist, instead of being an 'employee' of the organisation, becomes a 'supplier' or a 'provider', and invoices the client (the 'customer'). The art therapist becomes responsible for payment of their own NI, and the tax on the monies earned, on a Schedule D basis.

However, if the art therapist takes a 'Direct Payment' client on *independently*, and sees him/her in a private space, with no link to the care team, the work is then part of the art therapist's '*private practice*', with the associated personal responsibility for tax and NI, being 'self-employed' for this work.

BAAT strongly recommends that:

- 1) Supervision or consultancy should be sought when negotiating a contract with an organisation and prior to beginning work, especially if this is a new venture. Issues such as assessment protocols, caseload,

**Group art therapy (1.5 hours face-to-face contact @ £70 to £90 per hour and 30 minutes setting up, clearing up and writing reports or notes @£40 per hour):
£125 to £155 per group in total.**

PROFESSIONAL INDEMNITY INSURANCE

All self-employed art therapists should hold by law their own professional indemnity insurance (PII). (Please see BAAT website for recommended Insurers.) Some PIIs are only valid at the time of a complaint, so even if an art therapist was duly insured whilst seeing clients (or supervising the clinical work), what matters is whether the therapist has PII cover at the time of a complaint. BAAT recommends that members checked the terms and conditions of cover when retiring or leaving practice and if not included, that they purchase special 'cover for life' PII on retirement or end of clinical/supervisory practice.

While litigation in the UK is not as widespread as in the US, it is none the less possible for claims to reach the order of £2 million. The standard £1 million policy may no longer guarantee full cover and you are advised to look carefully at the level of Professional Indemnity Insurance cover that you wish to obtain.

CONTRACTS OF SELF-EMPLOYMENT

For general information on employment and contracts, refer to Department for Business, Energy & Industrial Strategy
<https://www.gov.uk/government/organisations/department-for-business-energy-and-industrial-strategy>

Unite can advise its members who encounter difficulties with contractual and employment issues, hence, the BAAT recommendation to join UNITE or other trade unions.

CONTRACTS - a brief outline

A contract of employment is an agreement entered by an employer and an employee (or self-employed contractor) under which they have certain mutual obligations.

BAAT recommends that all contract of employment should be in writing and that all self-employed art therapists should have a written contract with the organisations they work for.

All employees taken on for one month or more are entitled by law to be given, within two months of the date the employment starts, a written statement setting out the main particulars (a 'written statement of employment particulars'). This statement will not necessarily cover every aspect of the contract but will constitute important

evidence of the principal terms and conditions. Variations may be made with mutual agreement. It is unlawful for one party to vary the terms and conditions in the contract without the agreement of the other. However, provisions allowing an employer to make changes, such as, requiring the employee to move to a different work-place, may form part of the contract.

It is always open to either party to seek to renegotiate the terms and conditions with the other. Note that if an employee finds a variation of contract unsatisfactory, but nevertheless continues to work under the new terms and conditions without making his or her objections known to the employer, he or she could, after a time, be deemed to have implicitly accepted it, and the variation would then become incorporated into the contract.

CONTRACTS (or Written Statement of Employment Particulars)

Contracts for work as a self-employed art therapist must include the following information (also applicable to contracts for permanent employment):

- **The names and address of the employer and the art therapist**
- **Date** when the art therapist starts to deliver the agreed service.
- **Remuneration** (the agreed hourly rate of pay, or the agreed fee for the whole session/day) and the intervals at which it is paid (Refer to Rates of Pay for Art Therapist Guidelines above)
- **Hours** of work (a statement of the amount of paid work hours each day/week, and whether payment will be made for any additional work undertaken – the rate for this should be included under ‘**Remuneration**’)
- The entitlement of employer and self-employee to **notice** of termination
- Job **title** or a brief **description of duties*** (see below for BAAT recommendations)
- Where it is not permanent, **the period for which the employment is expected to continue** or, if it is for a fixed term, **the date when it is to end** (any scope for extension of contract should be noted)

Either the **place of work** or, if the employee is required or allowed to work in more than one location, and indication of this and of the employers address; the statement must also include a note giving certain details of the employer’s **disciplinary and grievance procedures**** (see below), and stating whether or not a pensions contracting-out certificate is in force for the employment in question.

Description of Duties*

The BAAT recommends that a clear outline of the services that are required to be carried out in the employment each day/week should be given. It should include the number of clients that the art therapist is expected see, and the number of individual/group sessions to be provided. Any other related task should be included, such as the specified number of hours that will be paid for, for assessing clients, attending meetings, writing reports.

Disciplinary and Grievance Procedures**

- Lines of accountability should be outlined in the contract in relation to disputes. In the first instance these should indicate how disputes on issues of policies, practices and personalities should be resolved within the institution, on an individual or staff group basis.
- The contract should also outline how misconduct, of employers and employees, will be dealt with by disciplinary proceedings laid down by the employing authority or management committee.
- It should state the grounds and procedures of appeal. Further, the contract should state that a copy of the rules covering grievance and disciplinary proceedings will be made available to hourly paid staff, either at the commencement of employment or on request.

Clinical Supervision

Clinical supervision is a regular time set aside for the art therapist with a suitably qualified and experienced practitioner, when the art therapy process and the therapeutic relationship with the client is thought about. Clinical supervision is embedded in the BAAT Code of Ethics and Principles of Professional Practice and is intrinsic to good practice.

Self-employed art therapists need to make their own arrangements for supervision, and the suggested level of fees takes account of this expense. This cost may be claimed for against tax being 'professional consultation'. Detailing supervision costs in a self-employed contract may lead to the contract being perceived as an employment, rather than a self-employment contract.

Liaison with the Organisation

Contracts should specify:

- to whom the art therapist is directly accountable clinically and/or managerially, week to week. i.e. a 'link' member of the full-time staff team, or the organisation manager/senior worker/consultant
- how information relevant to matters of the organisation and service, for patients and clients, will be made available to the art therapist
- whether the art therapist will be expected to keep records of the work undertaken, and how these might be related back to the staff group (i.e. through periodic reports, verbal feedback etc).

Workplace legislation

Self-employed art therapists need to abide by workplace legislation such as Safeguarding children and vulnerable adults, equalities rights, and GDPR.

Continuing Professional Development (CPD)

To maintain State Registration, self-employed Art Therapists are also required by the Health and Care Professions Council to undertake CPD. Self-employed art therapists can claim costs for their CPD activities against tax.

USEFUL WEBSITES

British Association of Art
Therapists

www.baat.org

info@baat.org

HM Revenue and Customs

www.hmrc.gov.uk

Unite the Union

www.unitetheunion.org.uk

Department of Trade

www.dti.gov.uk

Government

www.direct.gov.uk

Citizens Advice Bureau

www.adviceguide.org.uk

ACAS - Arbitration and Conciliation

Advisory Service

www.acas.org.uk/publications

Invoice Template – Do not break down components of your fee (i.e. include charges towards travel, supervision, etc.), but give a gross total. The BAAT full member logo (not the corporate logo which cannot be used by individual members) is available to be downloaded from members' area of the BAAT website:

Your name & address

Email & Telephone

Tax Reference No (schedule 'D' No):

NI no:

INVOICE

To: Name of company/organisation

Date of Invoice:

No of Invoice:

Description and location of work – e.g. For providing an art therapy group at Shady Pines Group Home

Date(s): 1st, 8th, 15th & 22nd September 2019

Fee per session: £155

Invoice Total: £620

I confirm that I am responsible for paying Tax and National Insurance on the above amount

Terms of invoice: payable within a month of receipt

Bank Details if appropriate

Signed + HCPC Logo (downloadable from HCPC website)

