

Contracts

Making Life Easier: Simple Contracts, Clear Guidelines

So someone wants you to do some research and you have the historical skills for the job? Great! And now comes the bit that your historical education did not prepare you for. How do you set up a relationship based on a simple set of agreements between you and your commissioner?

The key thing is to ensure that each party knows what is expected of itself and the other party. Agreements will vary depending on whether you are self-employed or working on salary, but what follows is a simple guideline and initial checklist of the kinds of issues you should be considering.

Any agreement must be useful and meaningful to both parties. Avoid standard contracts unless you really understand them. Experienced contractors have found few of the standard contracts useful for historical research.

A contract is a statement of mutually agreed guidelines for any project. It should define parameters and set incentives which help the project towards completion. It is a tool for historian and commissioner alike. Of the eleven topics discussed below, some will be more relevant to your project than others.

1. Scoping Reports

Any agreement must define the services that each party will provide. These are a mesh between the wishes of the commissioner and the historian's skills at turning these into viable research. In this area you are the expert and should take the lead.

However, getting started is often the hardest part and a formal contract may not be appropriate until after you have developed an in-depth proposal. In such situations it is a good idea to charge a set fee to develop the proposal and arrange a time limit for the production of a scoping report. Such a report should assess historical resources and develop at least one outline, budget and timetable for research. At this point there is then the opportunity for the commissioner to assess the possibilities and for the historian to meaningfully tender for the project. A scoping report can be anything from a major report down to an exchange of letters.

Things to consider:

- A word range for the project
- Scope of project/chapter/topic headings
- Budget for research, transport, travel, illustrations, computers, technology, GST
- Who arranges publication
- Publication date
- List of sources/information/bibliography
- Assessment of sources
- Supply of additional resources (typing, computers, transport etc.)
- An early warning period or clause to avoid problems of interpretation or insufficient sources

2. Term of Contract

Make sure that you and the commissioner have a clear idea of the duration of the contract. Time is often the most severe constraint on research. For the commissioner the inability of the historian to meet deadlines could result in higher costs for the research and the opportunity cost of not having the research complete for its projected use. For the historian his/her reputation is closely aligned with the ability to deliver not only to the defined standard but also on time. Moreover, if a contract is undertaken at a fixed price, the historian may cause him/herself considerable cashflow problems by failing to complete on time.

Things to consider:

- Duration of contract
- Impact of duration on research quality
- Financial risk of failing to complete on time

3. Payment

When you are an employee payment is relatively straightforward and you are paid at regular intervals. When you are a contractor there is more potential for complications. Clear payment systems that reflect the progress of the research will benefit historian and commissioner alike. Historians, like other small business people, can not afford to carry costs for long, so it is vital for your sanity, and that of your banker, to clarify how and when payments are to be made.

Things to consider:

- Payment of salary/fees (how/when?)
- Payment of research costs (how/when?)
- Who is responsible for research costs/monitoring the budget/assessing bonuses?
- Payment of discretionary bonus (how/when?)
- Payment of royalties (if applicable)

4. Hours and Place of Work

When you are self-employed there is no employer responsibility to provide you with a working space or resources except where specified in your contract. Most contracts involve some support other than money. For example, it is common for a commissioner to provide working space to facilitate access to their archives, as well as use of photocopying etc. Since most contractors work from home or an office, you should state this in any contract to reinforce your independent status. Failure to do so can lead Inland Revenue to claim you are an employee and deny you tax deductibility.

Things to consider:

- A statement of place of work and hours if an employee
- Additional resources to be supplied by the commissioner
- If self-employed, a statement of the historian's independence and freedom to choose hours and place of work

5. Access to Libraries and Archives

Historians outside academia have greater difficulty accessing university library material, although there are various ways of circumventing problems. If you expect access to libraries and archives to be provided by an employer or commissioner, say so at the start. Access to an organisation's

archives is usually a privilege and if there are sensitivities as to whether material is to be made public, or privacy legislation considerations, set ground rules at the outset. This area is not straightforward and has to be viewed in relation to the independence of the historian. It is, however, unethical to publish material without the owner's permission. To create a climate of trust it can be simplest to agree to no publication before the main publication stated in the contract or to specify consultation prior to publication.

6. Progress Reports

To an outsider the research process is very difficult to measure, and it is important that the commissioner is given tools to obtain a general appreciation of the status of research. Words written, archives searched, hours spent on research, interviews taken are all possible measures. It is best to set up an agreed simple and transparent format that is updated regularly as part of the reporting process.

Things to consider:

- Systems for reporting (form and frequency)
- Measurement criteria (words, hours etc.)
- Whom to report to

7. Supervision of Project

Contract historians differ from academic historians in that they usually work for a client. It helps if the relationship is clearly defined at the beginning of any project, and the historian's independence is taken into account. Thereafter, as long as the historian appreciates the sensitivities and trust inherent in the relationship, project supervision is not usually a major problem. Good supervision is where regular reporting is undertaken and meaningful responses returned. Its measure is really how much useful information is exchanged.

Things to consider:

- Historical supervision where appropriate
- Supervision by client (designated liaison person/position)
- Independence of historian and a statement of support by the client for the project.

8. End Use of Material

It is important to understand the end use of material because this can impact on the research process and the collection of material. At the simplest level, there is little point in collecting audio material for a book or photographs for a radio programme; however, the impact is usually more subtle than this.

Things to consider:

- Format, e.g., a book, internal report, film etc.
- Consultation on presentation of material (name on cover, appropriate recognition etc.)
- A general statement of presentation values
- Clause for author to withhold name from publication
- Payment for byproducts e.g. booklets, annual reports

9. Copyright of material

The holding of copyright is an increasingly complicated area. At a bare minimum have a plain English agreement that covers the likely end use of material and gives some editorial control on possible future uses. If you want to tie this down precisely, see a lawyer. However, in many occasions the bulk of payment for any project will come from the fee for research, rather than royalties from a publication and so copyright becomes more a matter of principle and research integrity rather than immediate financial concern. In some projects there is also an issue of who retains working notes and material collected. In general it seems reasonable for the historian to retain their notes but materials obtained from the commissioner and photocopies that have been paid for by the commissioner should be returned, if this is the commissioner's wish.

Things to consider:

- Copyright held by author or jointly author/commissioner
- Payments associated with copyright
- Possible licensing period for publication 5-10 years
- Ownership of notes and research materials

10. Independent Contractor or Employee

Many historians who work on contract are self-employed. They will already be registered as sole traders with Inland Revenue for GST. They have the advantage that they can deduct expenses from tax, although this will involve them in regular paper work to keep tax authorities at bay. There have been some problems in the past with Inland Revenue accepting historians as self-employed, particularly on longer projects. To protect yourself, a self-employed historian should make explicit in their contract that they have the control over their hours and place of work. Setting yourself up as an independent contractor is simplified by reading a small business guide and/or talking to IRD or an accountant. This section could obviously be expanded but in this brief overview it is important to focus on the basics

Things to consider:

- Independence
- Control over hours and work
- Associated tax status and responsibilities

11. Arbitration

One of the best ways of preventing serious breakdowns in the relationship between commissioner and historian is to prepare for one at the outset, so that each knows the other's rights. Disputes over interpretation or progress are a lot easier to resolve if you have an agreed authority you can turn to for arbitration. This is often most usefully another historian.

Things to consider:

- An arbitration process
- An individual/organisation to arbitrate
- Financial/time implications of arbitration

Not all projects require a document that covers all the points raised above and some will need much more detail in one area and not in another. The big thing is to consider the relevant issues and decide for yourself what suits. It is then a matter of going through the issues with your commissioner, rather than rushing off to a lawyer. Once agreement has been reached there may be a good reason to see a lawyer, particularly in the area of copyright. However, a plain English agreement may be just as useful.

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