

A GUIDE TO DEALING WITH LITERARY AGENTS



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1. WHAT IS A LITERARY AGENCY?

It is an organisation which represents, advises, and assists its clients (authors) in their business affairs. An agency may be a limited company, a partnership or simply an individual. The larger agencies have over 50 employees, whereas at the other extreme there are many one man/ woman businesses.

2. DOES EVERYONE HAVE AN AGENT?

a) Short answer: no.

Many SoA members do not have agents.

b) Fiction

Agents operate most strongly in the areas of fiction and general non-fiction but are increasingly picky about who they take on. They earn their living from their commission, and if your financial expectations from writing are not fairly substantial, agents are unlikely to feel that the commission will cover their costs (regardless of your literary merit). At the other end of the spectrum, some very successful writers actively prefer to go it alone, without an agent, making their own deals and keeping 100% of their earnings.

c) Non-fiction

For general non-fiction, of the sort likely to be stocked by the chain booksellers, an agent may well help you to secure improved terms, but is not essential. A publisher can tell much about your work from a quick glance at your synopsis - which is not the case with works of fiction.

d) Other genres

Few agents are interested in representing authors of scholarly, professional, reference or highly illustrated works, and nor, generally, do they have the specialist knowledge to do so to any great effect. Agents very rarely take on poetry, memoirs or short stories. They are also particularly hesitant about taking on authors writing in their retirement when the chances of building up a lasting full-time career are reduced.

e) Self-publishing

Self-publishing is, as it says, something you do yourself. The intervention of an agent will not affect the terms you negotiate with printers, distributors or ebook-producers. An agent is unlikely to be interested in representing foreign/non-print rights for a self-publisher at least unless your book has become a hit.

f) Illustrators

Some literary agencies also represent book illustrators, but see also point 3.

3. IS IT WORTH HAVING AN AGENT?

A good agent should be able to attract the attention of good publishers and secure better terms (particularly the advance) than you can achieve on your own - and will probably thereby increase your earnings by more than the amount of its commission. Successful authors may also find it invaluable to have an agent in order to avoid wasting amount of time on the business side of their work.

However an indifferent agent will be of little value. He/she will simply allow you to make contacts and sell the ideas, while taking commission for drawing up routine contracts. There may also be little point having an unknown agent or one without good knowledge of rights management and contracts. If you have your own contacts, prefer to keep personal control over the sale of your work, and enjoy negotiations (backed by advice from the SoA), you may well decide not to have an agent.

An agent who charges an up-front fee may well be of no benefit to you - see point 12.a).

For fiction, an agent used to be very important because publishers were deluged with uncommissioned proposals and relied on agents whose taste they respect to sift through such material. But securing a good agent can be even harder than securing a good publisher, and these days authors do have an alternative. Self-publishing as an ebook is now commonly accepted as a

good way of testing the water - agents and publishers keep an eye out for works which are clearly doing well in such form, and Amazon rankings and reviews can be added to any submission you make. Indeed if the work does well enough in such form, you may end up feeling you don't actually want a traditional publisher and/ or agent.

For specialist non-fiction, you may well have a better idea than most agents of who your target readership is, and how to reach them (e.g. via a good website, giving talks, and other self-promotional activities) and of course it is far easier for a publisher to get a good sense of the book from a brief synopsis (something which is rarely the case with works of fiction).

Some literary agencies also represent book illustrators, on the same terms as they represent authors. But some illustrator agencies focus more widely, also representing photographers and illustrators working in a non-literary capacity. Such agencies may well take a much higher commission and have more draconian contracts. We believe that a few such agencies are regarded by book publishers as a go-to source of images available on poor terms e.g. copyright assignments and small one-off fees. Members who are uncertain should consult the SoA or the Association of Illustrators, theaoi.com.

4. WHAT SHOULD AN AGENT DO?

a) What services are provided by a literary agency?

A good agency should:

- (i) sell your work - exploiting all potential outlets. Thus, an agent should know the market intimately - what subjects are wanted, by whom, in what form, in which media, and, no less important, what subjects are not saleable. An agency should have good contacts and good relationships with publishers, editors, producers, managers and others who control the outlets for a writer's work - both at home and via sub-agents abroad;
- (ii) negotiate all business contracts in accordance with your instructions, keeping you informed to the extent that you have asked;
- (iii) account to you as soon as possible for all monies received;
- (iv) if required, offer you a degree of editorial and literary advice - or procure it for you.
- (v) we commend the Code of Practice and the Good Practice Guidelines of the Association of Authors' Agents. They can be seen at agentsassoc.co.uk.

b) What services are not provided by a literary agency?

An agency may have a better understanding of the practical aspects of publishing contracts and copyright than some lawyers, and will usually do its best to resolve disagreements and difficulties between its clients and those purchasing their work. However, an agency is most unlikely to finance litigation and in any serious dispute (e.g. broken contracts, copyright infringement etc.) it is therefore often necessary for members to seek the assistance of the SoA. Similarly an author may on occasion need to take an accountant's advice.

While a good agent will seek to project and promote your image and name, publicity is the publisher's, not the agent's task. If you appear regularly at festivals or other speaking events, the arrangements may be handled by you, your publisher, or your agent. You want to ensure from the outset that it is clear who is making the arrangements, doing the admin (liaising with the event, booking train tickets, ensuring copies of your book will be available, sorting out any public liability insurance that might be needed) and ensure they know that you expect a fee for appearances in all but exceptional cases - some publishers and agents fail to press for a fee, thinking of an event as publicity (even when the publicity value may be very limited, and without taking into account the demands of time and skill expected of the author). The SoA has a range of guidelines on various aspects of speaking at appearances.

An agent is not a publisher and should not attempt to act in that role while it is acting as your agent (see the next point).

c) Where there may be a conflict of interest

An agent should be ensuring that you get the best terms possible. In some situations, your agent may wish to act for more than one party in an agreement e.g. if it is representing a ghost writer, a celebrity and/ or a publisher - or the author of the underlying work, a scriptwriter and/ or a producer, - in a

specific project. Such deals tend to be much more complex than they first appear - furthermore in such circumstances, fighting for the best deal for you personally may well not be the agent's priority. This could also be a breach of the agency's duty to you, and members should get independent advice from the SoA.

Beware of any proposal via an agent that you license rights (notably in backlist titles) to a publisher on an ebook/print-on-demand basis - the terms are often poor and can be hard to terminate, and such deals involve little if any negotiating by an agent but ensure that the agent gets commission on resulting sales. Also get confirmation that the agent will disclose any business links it might have with the publisher of which you should be aware.

An agent is not a publisher. Some agents now offer to facilitate an author self-publishing in ebook (and/or print-on-demand) form - for instance via Amazon's 'White Glove' service. Again, such deals involve little if any negotiating by the agent. Any such arrangement should be clearly discrete from the agency's role of seeking out and negotiating bespoke deals on your behalf, and the agent should ensure you get independent advice (notably on the payment terms and length of licence) to avoid any risk of misunderstanding or conflict of interest.

An agent represents your business affairs, but does not have the authority to sell your papers (correspondence, manuscripts, contracts etc.), either while the author is a client or afterwards, without that author's consent. See the Appendix,

5. HOW TO SELECT AND APPROACH AN AGENCY

a) Finding the right agency

The Association of Authors' Agents is a trade association comprising many of authors' agents in the UK. Membership of the AAA is indicative of the agency's expertise (there is a turnover threshold below which an agency may not join the AAA). A list of members of the AAA can be found at agentsassoc.co.uk, along with its Code of Practice and Good Practice Guidelines, both of which the SoA commends. The Personal Managers' Association (thepma.com) is a similar association comprising British screenwriters' and dramatists' agents.

A more substantial list of approximately 150 UK literary agencies is given in *The Writers' and Artists' Yearbook* (Bloomsbury). Agents' own websites will generally indicate the sort of works an agency represents (and those areas it will not handle).

The SoA can advise members on the credentials and reputation of specific agencies on request. When asked how they came by their agent, many authors suggest that it was as much a matter of luck as anything else.

Most literary agencies do not specialise; they represent a variety of authors (e.g. fiction, biography, general non-fiction, etc). Some agencies specialise in children's writers and illustrators - others in film, TV and 'talent' (e.g. celebrity writers). Very few literary agents take on writers other than of fiction and general non-fiction.

The larger established agencies have experts (or sub-agents) in most areas of concern to authors. Not all of the smaller agencies have specialists in areas like the theatre, films, television or radio. They may use other agencies for selling such rights and translations. Agencies may specialise in a particular genre, e.g. crime, but will generally be reluctant to take on new writers whose works might directly compete with those of an existing client.

b) How to approach an agency

Most agencies give details on their websites as to how they like to be approached and will expect you to follow their guidelines on submissions to the letter - and the harsh reality is that many say they will not consider unsolicited proposals. Bearing those caveats in mind:

If you are an experienced writer who wishes to use the services of an agency, or is considering changing agents, you should probably just write, pitching your next work and giving details of works published or performed to date.

Apply to a named agent rather than the agency generally. It can be a good idea to write to one of the more junior agents who will still be building up their list. Personal recommendation by someone already represented by that agency (but not writing exactly the same sort of books) may be helpful.

If an agency shows interest, it is advisable to arrange a meeting with the agent concerned, in order to see if you are compatible and to discuss terms, before making up your mind.

If you are in the fortunate position of having more than one agent seeking to represent you, or are being courted by an agent even though you are currently happy without one, ask the agent to convince you that what they can bring to the party justifies their commission. In effect, get them to sell themselves to you – after all, the main skill you want from them is the ability to sell.

c) Should I approach more than one agency at once?

Agencies, understandably, prefer to be approached one at a time, but given how slow some are to respond, and the likelihood of being rejected, you may well want to approach more than one at a time.

6. SHOULD I HAVE A WRITTEN CONTRACT WITH AN AGENCY?

Yes. There should be a clear understanding of the agency's scope and authority, the commission it will take, and how the agreement can be terminated. It should be clear that the agent's commission is inclusive of sub-agents' commission. In addition, consider: do you want the agency to handle all your freelance work including e.g. occasional journalism, personal appearances on radio and television, lecturing etc; just your books; just your plays and scripts...? An author may allow an agency to deal with all income from writing and to take commission, for ease of accounting or if it happens that the agency does a great deal of relatively unremunerative work. Are you prepared to let the agency take a percentage of all your earnings, including those which are not negotiated through the agency e.g. income from ALCS? And/or from self-publishing? (While the agency is representing you, you would need to clarify that the agent is happy for you to keep any self-published version available.)

7. WHAT RIGHTS WILL NORMALLY BE HANDLED BY YOUR AGENT RATHER THAN THE PUBLISHER?

An agency will normally retain the following rights (i.e. not grant them to a British publisher):

- US (sometimes including Canadian) rights
- translation rights
- dramatic, TV, film and radio (except sometimes readings of undramatised extracts)
- merchandising rights (spin-offs like greetings cards and toys)
- electronic (other than ebook), including computer gaming
- pre-publication and (sometimes) post-publication serial (extracts in newspapers or magazines)
- (sometimes) audio and video recording
- any rights not specifically granted to the publisher in the contract

Agencies may, themselves, sell your work to foreign publishers or they may do so through sub-agents (usually in the relevant territory but sometimes based in the UK).

8. IF I DO NOT HAVE AN AGENT, WILL MY PUBLISHERS ACT AS AGENTS FOR SUBSIDIARY RIGHTS?

In the absence of an agent, it is common for publishers to control many of the subsidiary rights in a book - at least print rights worldwide, in return for a percentage of the proceeds. You should satisfy yourself that your publisher is in a position to market the various rights effectively (especially if the publisher seeks to control dramatisation rights), and members should check with the SoA that the terms proposed are reasonable.

9. WHAT DOES AN AGENCY CHARGE?

a) Joining, reading and editing fees

Reputable agencies do not normally charge reading or other fees, but certain expenses, such as specialist legal fees, the purchase of copies of your works in the hope of selling, for example, foreign rights, may be charged by agreement. Be wary of agencies charging joining fees, reading fees or editing fees. It suggests that the agency is not successful enough to cover its costs by way of agency commission; and publishers will pay much less heed to recommendations from such agencies (suspecting that their main reason for representing a work is the up-front payment than the quality of the material itself) than they would be to recommendations by agencies which have not been paid by the author.

b) Commission

An agency will deduct commission in the form of a percentage of the monies received under contracts negotiated by the agency. Traditionally this was 10% but these days it is more likely to be 15% for sales in the home market, 20% for American and other foreign sales and dramatisation rights. You should ensure it is clear that your agent's commission includes (rather than being in addition to) any commission paid by your agent to a sub-agent. The percentages may be negotiable in the case of particularly successful authors.

c) Commission on rights

In the absence of an agreement to the contrary, the agency is entitled to a commission on rights not retained by the agency but controlled and sold by the publishers under any publishing contract negotiated by the agent. The agency commission is in addition to the percentage taken by the publishers. Since the money from such sales will be coming in under the original British publishing contract, the agent's commission should of course never exceed the home market percentage.

d) VAT

If the agency is VAT-registered, it must charge VAT on all its commission (regardless of where the income comes from). If you are also VAT-registered, you can claim it back, otherwise it is a deduction you just have to accept.

If you are VAT registered, and the monies coming to you from e.g. a publisher include VAT, the agent's commission should be calculated on the monies due to you excluding that VAT element.

10. AGENTS AND ACCOUNTANTS

Authors are responsible for their own VAT and tax returns and payments. An agent cannot take over this task.

An agent's commission will, if the agent is registered for VAT, be taxable at the standard rate of VAT and will represent some of an author's taxable inputs. An agent's commission in respect of zero-rated fees and on royalties received from outside the EC, is not VATable.

It is essential that an agent is informed of your VAT status (and your VAT number if appropriate) and/or if you operate as a limited company.

Where income is paid to the agency from a foreign company, they agent may well require you to complete necessary double-tax forms, but should be willing and able to guide you through the process.

11. HOW DOES ONE BREAK AWAY FROM AN AGENCY?

It is important that your contract with the agency specifies the length of notice required to terminate the arrangement – 60 or 90 days from written notice on either side would be usual.

Even after the termination of an agency's authority, it will usually remain legally entitled to commission on money accruing under contracts negotiated by that agency, or out on submission (particularly if your contract with the agency says so). The agency will expect to continue to service existing contracts. Sometimes it can be agreed that the publisher will pay the agency its commission, and pay the balance direct to the author.

Bear in mind that your contract is likely to be with the agency, not your particular agent. Thus if your agent leaves the agency and you wish to follow suit, the above commission arrangements will still apply (possibly on future books as well, if you have a multi-book deal with your publisher). It may in

some circumstances be possible to negotiate a 'key man' clause so you can follow a particular agent should they leave the agency.

APPENDIX: AN AGENT'S FIDUCIARY DUTY

An agent's fiduciary duties to its clients (you) include:

a) Duty to account

An agent who receives from or creates any property for you on your instruction:

- must keep it separate from the agent's own property;
- has a duty to keep proper accounts of the property received and to give such account to you on request even after the agency relationship has ceased;
- is obliged to return such property and any copies to you on request.

b) Duty of confidentiality

The agent may not disclose any information concerning you or any confidential information entrusted to him by you to any third party without your consent. Confidential information entrusted to an agent includes any information (including business papers) which is not readily available to the public. Even if the agent has ceased to act for you, or you have died, the agent must continue to keep confidential any such information unless it has ceased to be confidential. The duty is far wider than that encompassed by Data Protection legislation – with which the agent must also comply, of course.

c) To act in your best interests

The agent owes a duty to act in your best interests.

d) No conflict of interest

The agent's duty to avoid conflict of interest applies to cases where the interest of the agent himself or that of his close relatives conflicts or potentially conflicts with his duties to you.

e) No secret profit

An agent should not make any profit or acquire any benefit in the course of the agency without your knowledge and consent. Such profit, generally known as secret profit, is not restricted to money but may include anything of value, for example an interest-free loan, a club membership, etc. A sale of your papers without permission, for example, may well be considered to be an example of secret profit.

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