



ARTS COUNCIL ENGLAND

Standard terms and conditions for grants

September 2023

Standard terms and conditions for grants

These standard terms and conditions for grants apply to all grant offers made through Arts Council National Lottery Project Grants and other relevant programmes (as set out in your offer letter) from 1 September 2023 onwards.

This document is important. It sets out the standard legal conditions of our grant offer to you. This is a legal document and you should ensure that you fully understand your responsibilities before accepting a grant from us.

If you have any general questions about this document, please contact our Customer Services team on 0161 934 4317. However, if you need legal advice, please contact your solicitor.

If you do not have access to the internet or email and require additional documents, or if you require this document in an alternative format you can ask us by phoning 0161 934 4317.

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1. Definitions

- 1.1. 'You' and 'your' means the person (individual) or organisation that we have given a grant to and is bound by these terms and conditions.
- 1.2. 'We', 'us' and 'our' means Arts Council England and includes our employees and those acting for us.
- 1.3. The 'Project' means the project or activity that we have agreed to give you a grant for, as set out in your application form or proposal together with any supporting documents such as budget information, a timetable and any other documents that set out how your Project will be managed ('the Project Proposal').
- 1.4. The 'Grant Agreement' includes and incorporates:
 - 1.4.1 these standard terms and conditions;
 - 1.4.2 the Offer Letter which sets out any additional conditions;
 - 1.4.3 the Project Proposal;
 - 1.4.4 and any other conditions we have agreed with you now or in the future.
- 1.5. The "Subsidy Control Regime" means the Subsidy Control Act 2022, and the Subsidy Control (Subsidies and Schemes of Interest or Particular Interest) Regulations 2022, together with the Department for Business, and Trade and the Competition and Markets Authority's published guidance on the Subsidy Control Regime or as such other laws and/or guidance that may apply or as amended or replaced from time to time, that regulates the award of financial assistance that meets the definition of 'subsidy' at section 2 of the Subsidy Control Act 2022."

2. The grant

- 2.1. The amount of the grant is set out in the Offer Letter. We are not able to increase the amount of the grant. The amount of the grant may be different to the amount that you applied for.
- 2.2. You must accept our offer within two weeks of receiving it by accepting your grant online. If you do not accept your grant online within two weeks our offer will lapse. If you are an organisation, the Offer Letter must be accepted by someone who is authorised to sign on behalf of your organisation. Your acceptance online will be deemed your signing of the Offer Letter. The Grant Agreement will come into force on the date that you accept your grant online and will be deemed the date of your Grant Agreement.
- 2.3. We will pay the grant in the instalments as set out in the Offer Letter.
- 2.4. You must use the grant exclusively for the Project.
- 2.5. You must tell us promptly about any changes to information you have given us, including any changes to your bank or building society details and you must make sure that the information you hold is always true and up to date.
- 2.6. You must hold any unused part of the grant on trust for us at all times.
- 2.7. You must tell us if you receive any other funding for the Project from any other source at any time during the Project. If this means that you no longer need the funding from us and/or that our funding duplicates something you later receive other specific funding for, you must pay the grant or the appropriate portion of the grant back to us immediately upon demand from us.
- 2.8. If you spend less than the whole grant on the Project, you must return the unspent amount to us promptly. If the grant part-funds the Project, you must return the appropriate share of the unspent amount to us.
- 2.9. As the grant comes from public funds, you must account to us for any profit that you make from the Project and we reserve the right to require you to pay back all or part of the grant.

- 2.10. If you enter into an agreement with any third party with a view to commercial exploitation of the Project or anything related to it, you must contact us to obtain our consent. Our consent may be subject to conditions, including conditions requiring the repayment of all or part of the grant.

3. The project

- 3.1. You must get our written permission before making any changes to the Project or to its aims, structure, delivery, outcomes, duration or ownership.
- 3.2. If we agree that you can make changes to the Project, we may ask you to agree to additional conditions. Any agreed changes and/or additional conditions will be set out in a separate legal agreement between us and you; you should not start any new or changed activity until that agreement has been signed by both us and you.
- 3.3. You must start the Project within one month of receiving the first grant payment from us.
- 3.4. You must tell us if your plans to complete the Project, or your own ability to complete it, changes.
- 3.5. You must ensure that all records, including financial records, relating to the Project are accurate and up to date. You must keep these records for at least seven years after the Project has finished.
- 3.6. Where it is required, you must maintain adequate insurance at all times and we may ask you to send us copies of these policies. This includes employee and public liability insurance and insurance that covers the full replacement value of any assets you have purchased using the grant.
- 3.7. You must give us, or any person nominated by us, access to all records relating to the Project or other projects funded by us upon demand, including (but not limited to) accounts and any other financial records,

VAT and any other tax records. We can ask for access to these records for up to seven years after the Project has finished.

- 3.8. You must send us any information and records that we reasonably require to monitor your Project and how the grant is being used.
- 3.9. If it is requested as part of your Monitoring Schedule and Payment Conditions, you must provide us with a brief report on the Project within one month of completing it, using our standard activity report form which is held in your online account.
- 3.10. Where requested you must provide us with clear and accurate accounts that cover the period of the Project. These accounts must follow any relevant legal requirements for accounts, audit or examination of accounts, annual reports or annual returns and must clearly show income and expenditure. We may ask for proof of expenditure.
- 3.11. If the grant is for more than £50,000, a qualified and independent accountant must certify a Statement of Income and Expenditure.
- 3.12. In carrying out your Project, you must operate in a way which complies with all relevant laws and government requirements. This includes, but is not limited to, legislation or regulations governing the way you operate, the work you carry out, the staff you employ, or the goods and services you buy. For example, you are responsible for obtaining any licences, permissions and insurances that are required by law or ensure best practice.
- 3.13. You must have appropriate policies and procedures in place and act in accordance with them at all times to help you comply with any relevant law, government requirements and best practice. This may include, but is not limited to:
 - 3.13.1. at all times complying Data Protection Legislation. Data Protection Legislation shall mean without limitation:
 - a) the United Kingdom General Data Protection Regulation; and
 - b) the Data Protection Act 2018 together with all other applicable UK laws whether currently existing, yet to be implemented, or to act as successor legislation, that

regulate the collection, processing and privacy of personal data;

3.13.2. You must act in a manner to ensure the safety and wellbeing of all participants in the delivery of the project.

3.13.3. Equal opportunities including discrimination on the basis of race, age, gender, disability, religion and/or sexuality;

3.13.4. Employment law;

3.13.5. Harassment and bullying.

3.14. The following conditions apply if you or your employees, business partners, contractors or volunteers will supervise, care for or have significant direct contact (which, for the avoidance of doubt, includes contact by electronic and/or digital means) with a vulnerable person during the Project:

3.14.1. A 'vulnerable person' means:

- a) anyone under the age of 18; and/or
- b) anyone who needs (or may need) community care services because of mental disability, other disability, age or illness, and who is (or may be) unable to take care of themselves or unable to protect themselves against significant harm or exploitation.

3.14.2. You must consider all the risks that may arise from your contact with the vulnerable person and take all reasonable steps to ensure their safety. Before having any significant direct contact with the vulnerable person, you must get the written agreement of the legal carer or guardian of the vulnerable person.

3.14.3. As well as your responsibilities in clause 3.16.2, you must have and carry out a written policy and set of procedures to safeguard vulnerable people if during the Project, your employees, business partners, contractors or volunteers supervise, care for or have significant direct contact with vulnerable people.

- 3.14.4. As part of these procedures you must check with the Disclosure and Barring Service (DBS) the backgrounds and disclosures of those employees, business partners, contractors or volunteers who will, during their Project, supervise, care for or otherwise have significant direct contact with vulnerable people.
- 3.14.5. If you are the person having significant direct contact with the vulnerable person, you must have your background checked by the Disclosure and Barring Service (DBS) and have a clear and valid certificate readily available to provide on request.
- 3.14.6. You must act in a manner to ensure the safety and wellbeing of all participants in the delivery of the project.
- 3.15. You must comply with this clause 3.16 even if you are not required to do so under any child protection or care standards legislation, and whether the work is formal, informal, voluntary or salaried.
- 3.16. We cannot advise you of your legal responsibilities in your dealings with vulnerable people, and these conditions are not legal advice. If you have any queries about your obligations, we strongly advise that you seek your own independent legal advice and also contact the National Society for Prevention of Cruelty to Children. www.nspcc.org.uk/inform

4. Information, marketing and publicity

- 4.1. You must acknowledge the grant publicly as appropriate and as practical.
- 4.2. Where you are delivering project work, you must follow our branding and publicity guidelines at all times. You will acknowledge our support and the support of the National Lottery (if your grant is from National Lottery sources) in any published documents that refer to the Project, including any advertisements, accounts and public annual reports, or in written or spoken public presentations about the Project.
- 4.3. You must acknowledge our grant by following the guidelines we will provide. If your grant is from National Lottery sources and you are

delivering project work, you should feature the appropriate Grant award logo/National Lottery grant award logo on all information, marketing and publicity materials relating to the activity we have agreed to fund, including printed and online material. You should also incorporate verbal and written acknowledgment of our support into your communications. You can download the Grant award logo/National Lottery grant award logo and access full details of how to acknowledge our support at www.artscouncil.org.uk/grantawardlogo. Alternatively, you can email grantawardlogo@artscouncil.org.uk or phone 0161 934 4317 for further information.

- 4.4. The National Lottery grant award logo, other 'Crossed fingers' logos and the words 'The National Lottery' are owned by the Gambling Commission ('the Commission'). The Commission is responsible for licensing and regulating the National Lottery. It aims to ensure the integrity of the National Lottery, to protect players and to maximise the funds that can be paid out in grants. The Commission has granted Camelot UK Lotteries Limited ('Camelot') a licence to operate the National Lottery until January 2023. Under the terms of the licence, it is a single- purpose company, dedicated to the operation of the National Lottery and is regulated by the Commission.
- 4.5. We hereby give you the permission to use the Grant award logo/National Lottery grant award logo to acknowledge and celebrate your grant award. In using the logo you must comply with the guidelines available at www.artscouncil.org.uk/grantawardlogo, or any future versions that we notify you of.
- 4.6. Please note that with regard to the National Lottery grant award logo:
 - 4.6.1 this permission is specific to any National Lottery-funded activity and you may not transfer any of these rights to another project or organisation;
 - 4.6.2 we will share information about your project with the Commission and Camelot to enable it to monitor your compliance with the National Lottery grant award guidelines and to take appropriate action should you breach its terms.

- 4.6.3 we will have the right to end your permission to use the National Lottery grant award logo if our own permission from the Commission and/or Camelot is terminated or if you do not comply with the National Lottery grant award guidelines or if your grant from the National Lottery funds is withdrawn, suspended or terminated. If this permission ends, you must stop using the National Lottery grant award logo immediately.
- 4.7 We acknowledge that you will own all rights in any materials produced for or relating to the Project and in the Project Proposal, including any intellectual property rights. You hereby grant us a non-exclusive, worldwide, royalty-free perpetual licence to reproduce any materials relating to the Project and the Project Proposal as we reasonably require for marketing and publicity purposes. We may also share information with other funders, government departments, regulatory agencies, partners and others with a legitimate interest in public funding.

5. Additional Conditions for organisations

- 5.1. You will ensure that you are at all times correctly constituted and that you can deliver the Project under the terms of your constitution.
- 5.2. You must get our written agreement before:
 - 5.2.1. changing your governing document, (unless you are a statutory organisation) concerning your aims, payments to members and members of your governing body, the sharing out of your assets (whether your organisation is dissolved or not), or the admission of any new members; or
 - 5.2.2. transferring your assets to, or merging or amalgamating with, any other body, including a company set up by you.
- 5.3. You must write to us as soon as possible if any legal claims are made or threatened against you and/or which would adversely affect the Project during the period of the grant (including any claims made against members of your governing body or staff concerning the organisation).

- 5.4. If you are an unincorporated group, the person accepting the grant must have the authority of the group to enter into the Grant Agreement on behalf of all the members of the group. All members of the group will be jointly and severally liable under the Grant Agreement.
- 5.5. You must tell us in writing as soon as possible of any investigation concerning your organisation, trustees, directors, employees or volunteers carried out by the Police, Charity Commission, the Office of the Scottish Charity Regulator, HM Revenue & Customs or any other regulatory body.
- 5.6. You acknowledge that the grant comes from public funds and acknowledge that the support provided must be compliant with the Subsidy Control Regime. Where applicable, you agree that we will publish information relating to the grant and that you will keep reasonably detailed records to demonstrate compliance with the Subsidy Control Regime and shall provide a copy of such records to us upon reasonable request. In the event that it is deemed by a competent court or other regulatory authority to be non-compliant with the Subsidy Control Regime, you will repay the entire grant (and any other sums due) immediately.

6. General Conditions

- 6.1. If you breach any term and/or condition of the Grant Agreement and we do not enforce one or more of our rights straight away, this does not mean that we will not do so in the future. We will give up our right to enforce the Grant Agreement only if we tell you in writing.
- 6.2. If you breach any term and/or condition of the Grant Agreement, we can choose to treat that as you breaching any other grant agreements we have with you. This will allow us to take the same actions under those agreements that we may take under this agreement, including making you pay back the grant and stopping any future payments.
- 6.3. Our staff, council members and advisers cannot give you professional advice and will not take part in carrying out your business. We cannot be held responsible for any action you take, any action you fail to take, or for your debts or liabilities. Even though we may give you funding and

talk to you about your activities, you are still fully responsible for every part of the Project, your business and the decisions about it. We will not be responsible to anyone else who may take, or threaten to take, proceedings against you.

- 6.4. You are responsible for getting your own management, business and artistic advice. This includes considering whether you need to get financial, accounting, tax, solvency, legal, insurance, human resources or Subsidy Control Regime or other types of professional advice. You must not assume that your business is financially stable or solvent (this means your business is able to meet its financial responsibilities), even if we continue to support you.
- 6.5. If applicable, you/your Organisation must obtain all approvals, consents and licences required by law to completed the proposed project. At all times you must comply with any relevant laws or government requirements which may be applicable and/or in forces at any time during the duration of this funding agreement, and comply with best practice in governance, reporting and operation. The includes (but is not limited to):
 - 6.5.1. Ensuring that you/your Organisation do or does not work with organisations proscribed under the Terrorism Act 2000
<https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2>
 - 6.5.2. If applicable, you will comply with the Modern Slavery Act 2015 and any other slavery, servitude and forced or compulsory labour and human trafficking legislation.
 - 6.5.3. Any legislation of regulations in relation to ‘sanctioned’ countries, organisations and/or individuals which may be in force at any time during the duration of the funding agreement (“Sanctions Legislation”). Information on the UK Sanctions Regime can be found at:
<https://www.gov.uk/government/collections/uk-sanctions-regimes-under-the-sanctions-act>

- 6.6. Your grant comes from public money, so if you are planning to buy goods or services with your grant, you should always buy them in a way that will give value for money and avoids any conflicts of interest. If you are an organisation and the funding that you receive from us accounts for 50 per cent or more of your annual income then you must ensure that when you purchase goods or services you do so in line with your obligations under the Public Contracts Regulations 2015 (as amended or replaced from time to time) (“PCR”). For contracts within the scope of Regulation 13 of the PCR you must procure in a manner compliant with the PCR and for all other contracts, procure in a manner which ensures that suppliers are treated equally, without discrimination and that any procurement process is conducted in a transparent and proportionate manner. You should seek legal advice where appropriate.
- 6.7. We get the funding we give to you from different places, including National Lottery. We do not expect this funding to be reduced or stopped but, if it is, we may reduce or stop your grant before we have paid you the full amount.
- 6.8. We are not obliged to provide, and nor should you assume that we will, any further funding for the Project after this grant agreement comes to an end.
- 6.9. The Freedom of Information Act 2000 (‘the Act’) applies to us. This means any information that the Arts Council receives from you will be subject to the Freedom of Information Act 2000 (“FOIA”). By law, we may have to provide the information to a member of the public if they ask for it under FOIA. For further details, see the Arts Council’s information sheet How we treat your application under the Freedom of Information Act, available on the Arts Council’s website: <http://www.artscouncil.org.uk/>. If you have any concerns, you should let us know as some information may be covered by exemptions under FOIA if for example the information is sensitive or confidential, but any decision to release information under FOIA is at our absolute discretion.

Visit our publication scheme at www.artscouncil.org.uk/freedom-information for more information on how we apply the Act and our data protection policy.

We encourage you to visit www.ico.gov.uk for information on the Act.

7. VAT

- 7.1. You acknowledge that the grant is not consideration for any taxable supply for VAT purposes. You acknowledge that our obligation does not extend to paying you any amounts in respect of VAT in addition to the grant.
- 7.2. If you are registered for VAT, or subsequently become liable to register for VAT, you must keep proper and up to date records and you must make those records available to us and give us copies when requested.
- 7.3. If we have agreed to fund any or all of the VAT costs associated with your Project and you subsequently recover any VAT, you must pay us back immediately any of the VAT that has been paid for with the grant.

8. Conditions relating to assets or goods purchased with the grant

- 8.1. During the period covered by the Grant Agreement, you must not sell any assets or goods that have been totally or partly bought, restored, conserved (maintained or protected from damage) or improved with our grants without our prior written consent. If consent is given and you sell or dispose of the funded assets or enter into a rent review arrangement, you may have to repay us all or part of the grant received from us. The amount you must repay will be in direct proportion to the share of the project costs that came from us. If, with our consent, you sell the funded assets wholly or partly bought with the grant, it will be at full market value and we may impose conditions upon the transfer or disposition.
- 8.2. If the grant has contributed (or will contribute) to the costs of buying, restoring, conserving, or improving land, buildings or any other asset, you must not apply for a mortgage over that asset or use it as security without our prior written approval.
- 8.3. We may insist on third party rights being given to us (and in a form approved by us) under any contract that you have with contractors and consultants on most building projects.

- 8.4. If your Project involves the purchase of leasehold and/ or freehold property, we will take security on the freehold and/ or leasehold interest for your responsibilities under the terms of the Grant Agreement. We will also consider past capital projects funded by us in reaching a decision as to our requirements. If we have asked for security, you understand that no payments of the grant will be made until we have received the requested documents completed to our satisfaction.
- 8.5. It is anticipated that for this funding programme, the security required will be a deed of covenant (for a term aligned with this Grant Agreement) in standard form along with an undertaking from your solicitor to register a restriction at the Land Registry within 28 days of completion of the deed. If the property is unregistered, a deed of undertaking to effect first registration of the restriction thereafter will be required. In addition, we will also require confirmation (by way of a Certificate of Title, in our standard form) from your solicitors that you are the freehold owner or a lessee under a registered and assignable lease on terms acceptable to us, of the funded assets to which the Grant relates and that the funded assets will be used for creative and/ or cultural purposes. Where the funded asset is a leasehold interest, the lease will need to be for a term no less than the duration of this Grant Agreement, without a break clause and no forfeiture on insolvency provision and a permitted user provision that is compliant with creative and/ or cultural use. You may be required to give us copies of all relevant documents affecting the title to the property (for example, all mortgages, conveyances, leases and so on that affect the legal rights to the property). The type of security required for the Project will be set out in the Offer Letter.
- 8.6. Where the funded asset is a leasehold interest, you must ensure that the funding does not enable your landlord to charge a higher rent as a result of the grant. This shall apply for the duration of this Grant Agreement.
- 8.7. If any part of the grant is to buy land (whether freehold land or leasehold land), you are to send us when asked the following documents:
- 8.7.1. a surveyor's report on the condition of the property, its value for the purpose of the Project and continued use for creative and/ or cultural purposes;

- 8.7.2. confirmation by your solicitors that all necessary consents for the use of the property for the purposes of the grant have been obtained;
 - 8.7.3. for the purchase of leasehold land, a copy of the future lease and/ or agreement for lease;
 - 8.7.4. an undertaking to satisfy all other requirements as set out in clause 8.5 upon completion of the purchase of the freehold or leasehold interest; and, any other documents or requirements that we may request in order to meet the legal requirements
- 8.8. When procuring goods, work or services that are funded in whole or in part by the Funding Agreement you must ensure you are:
- 8.8.1. getting the best value for money when buying goods, works or services and ensuring that any procurement process is conducted in a transparent and proportionate manner and suppliers are treated equally, without discrimination.
 - 8.8.2. having appropriate policies and procedures for obtaining quotes or competitive tendering in place for purchasing any goods, works or services costing more than £12,000 (including VAT) over the whole life of the contract, including any extensions (irrespective of how likely it is that they will be exercised).
 - 8.8.3. complying with your obligations under the Public Contracts Regulations 2015 (as amended or replaced from time to time) (“PCR”), if you are a contracting authority subject to the PCR; and
 - 8.8.4. for contracts within the scope of Regulation 13 of the PCR, procure in a manner compliant with the PCR (as amended or replaced from time to time); and advertised in such a way as to ensure that all interested suppliers in the market are aware of the opportunity to tender for the contract as if you are a contracting authority for the purposes of the PCR. The Organisation understands it shall not sub-divide a requirement

with the intention of excluding the application of clause 8.8.4 or complying with your obligations under the PCR.

- 8.9. We may request, and you must provide any information we require to satisfy us that you have complied with your obligations under 8.8.1 to 8.8.4.
- 8.10. You acknowledge that we may incur financial liability if you break your obligations under clauses 8.8.1 to 8.8.4 and that you shall be liable to us for any losses, costs (including legal costs), damages and any other financial liability that it incurs as a direct result of such a breach.

9. Breach of these terms and conditions, and suspending or repaying the grant

- 9.1. If you fail to meet any of these terms and conditions or breach the Grant Agreement in any way, we may, in our absolute discretion:
 - 9.1.1. require you to pay back all or part of the grant (regardless of how much you may have already spent); and/or
 - 9.1.2. stop any future payments; and/ or
 - 9.1.3. terminate the Grant Agreement immediately; and/or
 - 9.1.4. take any of these actions in connection with any other grant that you may have with us.
- 9.2. We may recover the grant in our absolute discretion, if any of the following events occurs:
 - 9.2.1. you close down your business (unless it joins with, or is replaced by, another business that can carry out the Project and we have provided our prior written permission);
 - 9.2.2. you make any changes to the Project without first getting our written permission;
 - 9.2.3. you use the grant for anything other than the Project;

- 9.2.4. you do not follow our reasonable instructions;
- 9.2.5. you do not complete the Project on time;
- 9.2.6. you do not carry out the Project with reasonable care, thoroughness, competence and to a standard that would be expected for your level of experience in your artistic practice, profession or line of work;
- 9.2.7. you receive funding for the Project, or any specific element of the Project from another source (for example, from the Government) that duplicates the funding we have awarded;
- 9.2.8. you have supplied us with any information that is wrong or misleading, either by mistake or because you were trying to mislead us;
- 9.2.9. you are declared bankrupt or become insolvent, any order is made, or resolution is passed, for you to go into administration, be wound up or dissolved; an administrator or other receiver, manager, liquidator, trustee or similar officer is appointed over all or a considerable amount of your assets; or you enter into or propose any arrangement with the people you owe money to;
- 9.2.10. you act illegally or negligently at any time, and we believe it has significantly affected the Project, or is likely to harm our or your reputation;
- 9.2.11. without first getting our approval in writing, you sell or in some other way transfer the grant, your business or the Project to someone else; and/or
- 9.2.12. we deem it unlikely that the grant will fulfil the purpose for which we made it
- 9.2.13. you work with any prohibited organisation proscribed under the Terrorism Act 2000 as set out in clause 6.5.1.

10. Termination of the Grant Agreement

- 10.1. The Grant Agreement remain in force for whichever of these is the longest time:
 - 10.1.1. for one year following the payment of the last instalment of the grant;
 - 10.1.2. for building projects (freehold and leasehold purchase as well as refurbishment projects) five years following the payment of the last instalment of the grant;
 - 10.1.3. as long as any part of the grant remains unspent;
 - 10.1.4. the expiry of the maximum period required under the Grant Agreement for asset monitoring;
 - 10.1.5. as long as you do not carry out any of the terms and conditions of the Grant Agreement or any breach of them continues (this includes any outstanding reporting on grant expenditure or Project delivery).

Arts Council England
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Website: **www.artscouncil.org.uk**

Phone: 0161 934 4317

Email: **enquiries@artscouncil.org.uk**

Arts Council England is the trading name of The Arts Council of England. Charity registration number 1036733.

You can get this document in Braille, in large print, on audio CD, and in various electronic formats. Please contact us if you need any of these.

We are committed to being open and accessible.

We welcome all comments on our work. Please send these comments to our Customer Services Team at The Hive, 49 Lever Street, Manchester, M1 1FN or via the contact form on our website at: **<http://www.artscouncil.org.uk/contact-us>**