



## Charity Volunteers

A best practice guide

*We have set out some notes on volunteers in charities which we hope are helpful and provide food for thought. However much of this is concerned with employment law and health and safety issues. We are not qualified to give detailed advice on this but if you do not have a regular adviser on such matters we would*

## Introduction

Most charities rely heavily on volunteers so charities do need to be aware of the legal position of volunteers and review regularly their policies on the support, training and use of volunteers. These brief notes provide an overview of the current law and good practice for volunteers, with links to sources of further information and guidance.

There is no general legal definition of 'volunteer', they are in general those who work for a charity without being paid for their service in accordance with a role description and/or agreement, ideally in writing. Trustees are volunteers, because trust and charity law normally prohibit their receiving any benefit from their office, although they are entitled to reimbursement of expenses incurred on behalf of the charity.

Volunteers are not employees, workers, consultants or contractors, because all of these provide services for a consideration under a contract. However, the distinction between volunteers and employees (or workers) may not be so clear-cut. Volunteers may fulfil roles that are similar or even identical to those of employees, and volunteers are also usually under the control of the charity's management. Consultants and contractors are not under the control of management since they are self-employed and provide services for which they make a charge (invoice).

The key difference between volunteers and employees is that the latter are engaged by the employer in a legally binding relationship. This is normally evidenced by a written contract setting out the terms and conditions of the employment such as rate of pay, working hours, time off and holidays. A contract of employment need not be in writing but what is important is the intention to create legal relations. The key elements of a contract are an offer, acceptance, intention to create legal relations by both parties, and consideration. A contract of employment within the meaning of the statutory definition requires mutual obligations lasting over the entire duration of the relevant period.

If the charity undertakes to provide any benefit to a member of staff as an entitlement – even for a small amount, such as a profit element on top of expenses reimbursement – this could be interpreted as consideration supporting a contract and the recipient could be regarded as an employee.

Unlike employees, volunteers are not entitled to:

- the National Minimum Wage (with some exceptions);
- pensions (auto-enrolment requirements under recent pension reforms do not apply to volunteers);
- employment protection during business transfers and takeovers (TUPE);
- protection against unfair dismissal;
- consultation and other provisions in the case of redundancy; or
- right to equal pay for work of the same value under sex discrimination law and other legislation aimed at preventing discrimination in the workplace.

## **Rights of volunteers**

Charities are subject to Health & Safety legislation, the workplace must be safe and healthy for all people who visit it, including volunteers.

The charity will need to keep certain personal information about volunteers, as well as employees. All such personal information is subject to the provisions of the Data Protection Act which requires it to be secure, fairly and lawfully held, accurate and up to date, held for limited purposes, and not kept for longer than necessary. All volunteers have the right to find out what information the charity holds about them.

Volunteers who are in receipt of benefits continue to be entitled to those benefits when volunteering for the charity, as long as they are only receiving money to cover expenses. If a volunteer receives Jobseeker's Allowance, they can volunteer full time as long as they are still actively seeking employment, can attend job interviews at 48 hours' notice and can take up paid work at one week's notice.

## **Criminal records checks: protecting the vulnerable**

All childcare charities and charities dealing with vulnerable adults must ensure that their employees and volunteers (including trustees) have the appropriate criminal records checks, and they must undertake criminal record checks on all prospective volunteers.

Although volunteers are not covered by discrimination law, charities are subject to the Equality Act 2010, which bans discriminatory treatment of employees and service users. Volunteers would therefore be expected to adhere to the charity's equal opportunities policy when they come into contact with those people while volunteering.

Although unpaid, volunteers are expected to comply with the charity's relevant policies and procedures, including any confidentiality requirements and provisions for intellectual property rights.

Training should be provided as necessary to volunteers to enable them to carry out their volunteer role. However, giving someone a volunteering role should not be conditional on their undertaking the training, nor should the provision of training be made an inducement to take up a volunteering role. Charities should be insured to cover volunteers in the case of any loss or harm while they are working on the charity's behalf. Volunteers are normally reimbursed for their out-of-pocket expenses incurred in the course of their work for the charity. The reimbursement should be payment for actual expenses.

Volunteers may be immigrants. If they are Tier 2 migrants (employer sponsored migrants) they are allowed to undertake voluntary work in addition to their sponsored employment, provided that they are only receiving payment of expenses. If they are Tier 4 migrants (students) they are restricted in their ability to undertake voluntary work, depending on the nature of their studies. You can find further information on Tier 4 migrants and volunteering on the website of the UK Council for International Student Affairs.

It is essential that charities using volunteers are aware of what makes a person an employee. Cases have been brought to employment tribunals in which volunteers have established that there is a contract of employment, or a contract to provide personal service, to an organisation. As a result they have succeeded in bringing claims against organisations as employees or at least in establishing that they were entitled to bring such claims. In order to minimise this risk, there are certain pitfalls which should be avoided.

It is important that volunteers are paid only actual expenses, or a genuine and reasonable estimate of such actual expenses, and not any kind of notional figure. Any payment to a volunteer for work which they do may amount to consideration, and must be avoided.

While an organisation may well feel that it requires a minimum period of volunteering commitment to justify the cost of training a volunteer and to provide a seamless service to the public, it will be better for this to be expressed in terms of the 'hopes' of the organisation, rather than as an absolute obligation. A commitment to providing a certain number of hours of work before leaving an organisation should be avoided.

Similarly, while it may be useful from a management perspective for volunteers to volunteer at particular times and on particular days, this should also be expressed in terms of the organisation's hopes – a volunteer should not be put under a definite obligation to attend on particular days.

It is often necessary to provide some form of training to volunteers to enable them to carry out their volunteer role. However, volunteers should not be obliged to undertake particular training: the volunteer should be aware that at all times it is up to them if they attend the training. Presumably, if a volunteer does not attend a sufficient amount of training, he/she will not be able to carry out a particular role or progress, which may mean they have to change their volunteer role or stop volunteering completely.

It is important that volunteers are not offered training as an inducement to volunteer, as this may amount to consideration. In particular, volunteers should not be offered any training that isn't necessary to carry out the volunteering activity. The volunteer should not be asked to stay at the organisation for any particular period following training, nor should they have to repay training costs if they leave. This would clearly create obligations on the volunteer, indicating the existence of a contract.

In many cases, it will be inevitable that volunteers will work under the control of the organisation. Although this may indicate an employment relationship, it is not conclusive. There is no problem about expecting certain standards to be met by volunteers if and when they elect to carry out volunteering activities. However, it is not appropriate to have the same systems of supervision or appraisal for volunteers as for employees, or to structure these support systems in such a way as to obligate volunteers to attend at particular times.

It is inadvisable to have a disciplinary or grievance procedure for volunteers as these are characteristically procedures associated with employment. As a matter of good practice, it would be appropriate to give volunteers a route through which to raise concerns – for example, 'any concerns should be raised with the organisation or a named person'.

As volunteers are unlikely to be classified as employees, it is not necessary for a formal dismissal procedure to be followed if a volunteer's services are no longer required for whatever reason. If a volunteer is not carrying out his/her role effectively or is behaving disruptively, he/she can of course be spoken to or asked to stop volunteering. Organisations should avoid 'disciplining' or 'dismissing' volunteers as this may demonstrate that the volunteer is perceived to be under obligation to the organisation.

As a matter of good practice, the organisation should take care to ensure that all volunteers are treated in the same way, to minimise the risk of allegations of discrimination. Even if volunteers are unable to pursue such claims, these allegations can be very damaging to an organisation.

Relationships with volunteers are often formalised in a document such as a volunteer agreement. In these instances, it is important to use appropriate language. Any document should refer to 'hopes' and 'expectations' rather than 'requirements', 'obligations' or 'commitments' to make it clear that there is no intention to create a legally binding relationship.

If there is a role description for volunteers, it should make it clear that it does not impose any obligations on the volunteer but is only for guidance on the expectations for that role. Under no circumstances should an organisation have a procedure in place which suggests that any form of disciplinary sanction would be imposed for non-attendance.

The organisation can legitimately ask that a volunteer gives as much notice as possible of sickness, holiday or intention to leave so that it can arrange sufficient cover.

## **FOR GENERAL INFORMATION ONLY**

Please note that this guide is not intended to give specific technical advice and it should not be construed as doing so. It is designed to alert clients to some of the issues. It is not intended to give exhaustive coverage of the topic.

Professional advice should always be sought before action is either taken or refrained from as a result of information contained herein.

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