



4.0 Volunteers

Volunteers and the Law

Overview

1. Do Volunteers Have a Legal Status?
2. What to Consider
3. Summary
4. Further Information

Do Volunteers Have a Legal Status?

In UK Law, volunteers do not have a legal status; unlike paid staff they do not have employment rights.

Indeed, volunteers have few legal rights and cannot make a legal case on the basis of unfair dismissal, race, disability, sex discrimination, unequal pay, minimum wage etc (**there are, however, current proposals in place to ensure that the law on sexual harassment is extended to protect volunteers**).



Image: Group of volunteers

Organisations are not legally obliged to include volunteers within their policy framework however it is good practice to do so and by creating an inclusive culture can in fact help to mitigate risks of prosecution. It is possible, however, through the use of language and/or behaviour to unintentionally create an employment contract – which is simply a description of a relationship that exists and does not necessarily need to be in writing. It may be possible for volunteers to pursue legal action against an organisation where an employment contract is perceived to be in place.

In deciding whether or not a contract exists, and therefore whether a case can be brought under employment law, a tribunal will look at things such as expenses, training, obligations placed on the volunteers and the way in which the relationship is documented. These areas have the potential for a contract to be unintentionally created.

In order for a contract to exist, the organisation and the volunteer have to exchange something of value which is known as **consideration**. This applies to such things as paying more than out of pocket expenses, providing training which isn't relevant to a volunteer's role or offering free or discounted access to services and events. The second consideration of a contract is **intention** – unwittingly, organisations can create an obligation to volunteers by establishing time commitments.

In order to minimise the risk of creating an employment contract, organisations should avoid using language which can imply obligation and time commitments and use a more flexible language instead.

Furthermore, it is best that organisations avoid using words which can be easily misinterpreted and could be perceived as implying employment status e.g. **avoiding terms such as work, job description, holiday leave etc.**

What to Consider

Reimbursement of Expenses

Reimbursing volunteers' out of pocket expenses is important for ensuring that volunteering is accessible to everyone, not just those who can afford it. There is sometimes a temptation to pay more than the actual amount that has been spent as a means of rewarding volunteers.

In doing this an organisation is creating a contractual situation, bringing them potential liability under **Minimum Wage legislation**, and with tax and benefit implications for volunteers. Therefore, it's important only to pay the actual out of pocket expenses incurred by the volunteer to volunteer.



For more information on volunteer expenses see information sheet:

4.13 Volunteer Expenses

Benefits in Kind

These can constitute **consideration** where there is a commitment from the organisation to provide them, and an expectation from the volunteer that they will receive them. This could include free membership or goods in exchange for a period of service.

It is important that organisations avoid expectation of reward and any benefits in kind are proportionate to the role carried out. The occasional thank you such as an invitation to an event, modest gift or social outing does not amount to **consideration** and doesn't indicate **intention**.

Obligations

When volunteers are required to work a minimum number of hours this could be interpreted as a contractual arrangement, particularly when training has been provided as a benefit in return for the obligation to work.

If volunteers receive a flat rate payment in expectation that they will undertake a minimum number of hours this could be construed as there being both **consideration** and **intention** and is likely to be considered as a legal contract should the volunteer make a case.

Training

Training is required to enable volunteers to carry out their tasks effectively and safely, and there are implications under health and safety legislation if volunteers are inadequately trained.

However, where training is available which is not related to the volunteer role but is instead for the volunteer's personal benefit, particularly where this is seen by volunteers as a right, this can amount to **consideration**.

Mind Your Language

Language alone will not constitute a contract and has not been a crucial factor in any case law. However, when formalising the relationship with volunteers through written policies and procedures it is wise to avoid using language which has legal implications.

Certain words can be replaced with alternatives, such as:

| Word | Alternative |
|-----------------|------------------|
| Contract | Agreement |
| Job description | Role description |
| Employer | Organisation |

Say that you 'hope' volunteers will do something, or that 'volunteers normally...'; rather than that they 'will be required to'.

The risk of creating an unintentional contract increases over time: **for example, always ensure that you are communicating that all volunteers can refuse a task and are never obligated to attend regardless of how long they have been with an organisation.**

Volunteer Agreements

It is appropriate and good practice to document what the organisation offers to, and expects from, its volunteers as this is more likely to prevent the relationship falling into one which could be considered legally binding.

Keep it simple and don't over-formalise the language. You can add the words '**This agreement is binding in honour only and is not a contract of employment or legally binding**' to volunteer agreements. However, even this will not be sufficient to protect you from the law if your working practices indicate otherwise.



An example of a volunteer agreement can be found at the link below:
[TSSW Resources](#)

Intellectual Property Rights

A question which arises from time to time is '**who owns the copyright to work produced by volunteers?**' The answer is the volunteer, unless it is clearly stated that the intellectual property rights pass to the organisation.

Volunteers often have a valuable role in creating plans, photographs or data. Under a contract of employment, the copyright for such material created by an employee for the employer during working hours will pass to the employer. However, under a volunteering arrangement there is no such implied transfer of copyright.

A situation may therefore arise whereby a charity '**falls out**' with a volunteer, the volunteer may withdraw their consent to the charity using the copyrighted material. If that material is or is about to be incorporated in major publications or core documents of the charity, the charity may find itself experiencing severe difficulties or embarrassment and potential financial loss. It is clearly better to ensure that where a volunteer produces any material a simple agreement transferring that copyright to the charity is entered into.

Equality and Diversity Act

The Act does not apply to volunteers and they are not protected by the Act, but it is good practice to apply the Act's principles when working with volunteers.

Data Protection Act

Regulates the use of personal data and applies to all living people. Volunteers must comply with the Act and be trained in how the organisation handles, processes and stores people's personal data. Volunteers also have the right to know what personal data is kept about them.

Health and Safety Act 1974 Section 3

This Act does not include volunteers, but it is good practice to include volunteers as organisations have a duty of care to ensure they do not cause unreasonable harm or loss as a result of an activity.

Important areas of consideration include, therefore:

- Risk assessments
- Creating an understanding of risks relating to the volunteers'
- Roles induction
- Training
- Supervision
- Make equipment and materials available to safeguard volunteers in their tasks and ensure that your approach is always proportionate to the risk

Safeguarding

People aged 16+, in a volunteer role that gives access to children or adults in a regulated activity may need to have a DBS check. It is unlawful for organisations to apply for a DBS check unless you have assessed the role to be eligible for one. Organisations are required to explain to volunteers why they are to be DBS checked.

Age

There are no legal reasons why people under 18 years of age cannot volunteer. Children under 18, or under 16 if in employment, are classed as a vulnerable group however, children under 14 years of age should not volunteer within school hours nor for profit making organisations or carry out paid work.

In addition, organisations are required to seek parental consent, ensure appropriate adult supervision is in place, undertake a risk assessment and ensure a safeguarding policy is in place. It is important to note that some insurance companies will not cover the activity of older volunteers **i.e. 80+**. **It's important, therefore, to carry out regular risk assessments and to check your insurance cover.**

Volunteers from outside the UK

The UK left the EU on 31st January 2020; however, a transition period is in place until at least 31st December 2020. As such, people from the EU and EEA nationals can continue to volunteer until a deal is finalised and further clarification established.

Asylum seekers, those with refugee status or who have 'exceptional leave to remain' can all volunteer. It is good practice, however, for organisations to ask people to self-check their immigration status to determine whether each individual has the right to volunteer in the UK.

As an example, those with visitor visas cannot take up paid work and it can be viewed that volunteering could place them in breach of their visa restriction. The Home Office is an important point of contact for further clarification or for queries.

Summary

Most volunteer/organisational relationships remain amicable, although a few successful legal cases indicate that there are some conflicts that can be avoided to reduce the possibility that volunteers will want to take further action.

Although there are very few cases that are proved simply on the use of 'legal' terminology or the existence of policies which are similar to those for employees, there are good reasons for having policies which properly reflect the volunteering ethos, both in content and in language.

In any legal case, the law would be looking for working practices which could be interpreted as constituting a legal contract. The emphasis should therefore be on ensuring that these fall outside of a contractual relationship:

- Make sure that volunteers are treated fairly and have access to good procedures for settling disputes. Creating a positive culture helps to reduce misunderstandings that lead to conflict
- Accept responsibility for volunteers' wellbeing, offer reconciliation and respect their right to discuss matters of concern
- Make it clear that the roles of volunteers are voluntary, and unpaid
- Use flexible language which doesn't imply an obligation to volunteer
- Avoid using legal or employment jargon like 'work' 'contract' or 'job descriptions'
- Recognise that you cannot require volunteers to provide a service in return for training
- Don't pay flat rate expenses, sessional fees, lump sums or anything more than out-of-pocket-expenses
- Be cautious about offering volunteers perks such as free membership, gifts, goods, services etc. to ensure that they remain tokens of appreciation and not payment for services

Further Information

Home Office

UK Government

www.gov.uk/government/organisations/home-office

HM Revenue and Customs

UK Government

www.hmrc.gov.uk

Department of Work and Pensions

UK Government

www.dwp.gov.uk

Additional Information Sheets

Third Sector Support Wales

4.8 Keeping volunteers safe

4.9 Safeguarding and good management practices

4.13 Volunteer expenses



Cefnogi Trydydd
Sector **Cymru**

Third Sector
Support **Wales**

Third Sector Support Wales is a network of support organisations for the whole of the third sector in Wales.

It consists of the 19 local and regional support bodies across Wales, the County Voluntary Councils (CVCs) and the national support body, Wales Council for Voluntary Action (WCVA).

For further information contact
<https://thirdsectorsupport.wales/contact/>

Disclaimer

The information provided in this sheet is intended for guidance only. It is not a substitute for professional advice and we cannot accept any responsibility for loss occasioned as a result of any person acting or refraining from acting upon it.