

Guidance for charities engaging volunteers

A guide for charities



GUIDANCE FOR CHARITIES ENGAGING VOLUNTEERS

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There is no single statutory definition of a volunteer. However, the Compact Code of Good Practice on Volunteering defines volunteering as:

"an activity that involves spending time, unpaid, doing something that aims to benefit the environment or individuals or groups other than (or in addition to) close relatives".

A volunteer does not have the same protections as an employee or a worker. The UK government rejected a proposed amendment to the Equality Bill to specifically cover volunteers for equal treatment. However, it is possible that volunteers could still have protection under discrimination legislation (please see section 5 below).

1. COULD VOLUNTEERS ACTUALLY BE EMPLOYEES/WORKERS?

There are largely three categories of protected individuals if there is a contract between the individual and the organisation:

1. **Employees:** employees have certain legal rights, such as the right to claim unfair dismissal or a statutory redundancy payment.
2. **Workers:** workers are entitled to other statutory rights, such as the right to paid annual leave and the right to receive the National Minimum Wage (**NMW**) but are not entitled to claim unfair dismissal or statutory redundancy pay.
3. **Others:** A wider class of individuals may be protected from discrimination under the Equality Act 2010. See further below.

The legal status of volunteers can be difficult to determine. Different types of relationships are created depending on how the individual is treated by the charity.

2. ARE VOLUNTEERS ENTITLED TO BE PAID THE NMW?

Volunteers will only be entitled to be paid the NMW if they are workers, meaning they have a form of contract of employment or contract to perform work or provide services and receive financial remuneration or benefits in kind for providing their services.

If an organisation classifies an individual as a volunteer but they are in fact a worker this could result in the organisation being required to pay up to six years of backdated NMW to the workers and potentially be liable for a criminal penalty if it has wilfully neglected to pay the NMW.

Government guidance considers the implications of providing the following benefits to volunteers for NMW purposes:

1. **Reimbursing expenses:** It is sensible for charities to keep evidence of the reimbursement of expenses and only reimburse those actually incurred rather than anticipated expenses. The reimbursement of reasonable out-of-pocket expenses alone is unlikely to make a volunteer a worker.

2. **Rewards and gifts:** Regular rewards and gifts should not be given as this is likely to change a volunteer to the status of a worker. Unexpected gifts of a small value are likely to be acceptable.
3. **Uniforms and equipment:** Reasonable clothing and/or equipment which is required for the volunteer role is unlikely to result in them being regarded as a worker.
4. **Attendance at events:** If attendance is necessary to carry out their volunteering role then free entry to an event is unlikely to change their status.

3. GOOD PRACTICE, OBLIGATIONS AND DUTIES

Charities have the following obligations towards volunteers:

1. Protection of their data in accordance with the Data Protection Act 1998;
2. To ensure as far as reasonably practicable that they are not exposed to risks to their health and safety and give them information on matters relating to their health and safety; and
3. Where volunteering activities involves working with children and vulnerable adults, organisations need to apply to the Disclosure and Barring Service (DBS) for a check for regulated activity. Further, charities have a duty to refer information to the DBS where an individual harms a child or vulnerable adult.

It is best practice for a charity to:

1. Have a volunteer agreement (considered below);
2. Adopt the same fair recruitment practices for volunteers as for employees, even though volunteers are not covered as employees by discrimination legislation; and
3. Include volunteers in their health and safety policy and protect themselves and their volunteers against certain risks by taking out appropriate insurance.

4. VOLUNTEER AGREEMENTS

There is no legal obligation to have a volunteer agreement but it is good practice to have one in place to clarify the relationships between the parties. This should reduce the likelihood of disputes with volunteers and ensure obligations are properly respected.

A volunteer agreement could include the following information:

1. The volunteer's role
2. Induction and training
3. Supervision, support and flexibility
4. Expenses
5. Insurance
6. Health and safety.

However, it is necessary to avoid unintentionally creating a legally binding relationship when drafting the volunteer agreement as a volunteer could argue that such an agreement amounts to employment to gain protection.

To avoid this, a charity's volunteer agreement should be short, informal and in particular:

1. Describe the payment of expenses clearly; ideally reimbursing against receipts;
2. Remove or, at least, minimise 'perks'; for example training provided should be clearly linked to their volunteering role;
3. Give volunteers the ability to refuse tasks and choose when to work, removing the possibility of creating obligations;
4. Adopt flexible language to make the arrangement less contractual; and
5. Treat volunteers fairly, ensuring clear procedures are in place for dealing with problems and grievances.

Some charities may choose to also have a volunteer policy, which provides a framework for their volunteer programme. This can be used to set out overall principals and demonstrate the charity's commitment to their volunteer programme. For example, Cancer Research UK, The Prince's Trust and Scope have volunteer policies available from their websites.

5. COULD THE CHARITY BE PROVIDING THE VOLUNTEERS WITH A SERVICE?

As discussed above, volunteers do not have the same protections as employees and workers. However, by providing a volunteering opportunity, charities are providing the volunteer with a service which may give them protection under the discrimination legislation. There has yet to be a case to test this in the courts.

The main prohibitions on service providers are:

1. **Discrimination**, either:
 - a. Direct discrimination: being treated in a less favourable way than a real or hypothetical comparator because of a protected characteristic, e.g. not providing the service or not making reasonable adjustments; or
 - b. Indirect discrimination: decisions or policies which in practice have the effect of disadvantaging a group of people with a particular protected characteristic.
2. **Harassment**
3. **Victimisation**: where a person subjects another person to detriment because they either:
 - a. Believe that another person has done, or may do, a protected act; or
 - b. Where another person has done a protected act.

6. COULD VOLUNTEERS THEMSELVES BE PROVIDING A SERVICE?

A charity should also be aware that if a volunteer is delivering a service for the charity they are acting on the charity's behalf. Therefore, the charity could be legally responsible if that volunteer discriminated against any service user.

end

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