

## Volunteering and the law

### Who can legally volunteer with us?

Anyone from a European Union (EU) or European Economic Area (EEA) country and refugees are allowed to volunteer. Asylum seekers can currently only volunteer for a registered charity or voluntary organisation but this may change. People from outside the EU or EEA can volunteer if their visa allows it.

### Does my organisation or group need to have a formal agreement with volunteers?

No you do not, but in certain circumstances an agreement can be useful in clarifying responsibilities. Although legally you are required to have a formal agreement for employees setting out the terms of their employment, there is no such obligation for volunteers. If you do want to have a form of volunteer agreement in place, it should be an agreement, not a contract, to explain the support and supervision provided, training given, insurance cover, health and safety guidelines and what expenses are provided. It should not place any obligation on the volunteer to carry out their volunteering activities. It does not need to be signed, and does not form a contract between the volunteer and the organisation. It should talk about your hopes and expectations rather than any specific requirements you are placing upon the volunteer.

### Should volunteers be treated the same as our employees?

Employees and volunteers are different and have different ways of engaging with the organisation. One is defined by performing specific tasks for money and another about giving something to an organisation for free. As such they should be treated differently. If you do treat volunteers in the same way as employees then you run the risk that they will be viewed as employees by employment tribunals in the event of any dispute. Good practice dictates an organisation should have separate policies and practices for employees and volunteers. This ensures there is clarity between the two groups.

### Are organisations or groups allowed to pay volunteers anything?

No, as soon as you start to give volunteers any money or something of monetary value, you run the risk that the relationship becomes contractual, rather than voluntary.

### What sort of benefits can you provide?

Small tokens of appreciation such as a card, badge, training, social activities (within reason) or awards are not a problem. However it would not be acceptable to provide anything that is not directly linked to a volunteer's ability to carry out their duties. For example, secretarial training for a community basketball coach or making free or subsidised childcare available at times when someone is not volunteering would not be acceptable.

### Can you pay expenses?

Yes, in fact this is good practice as a volunteer should not be out of pocket when conducting their role. We have produced a guide on **Volunteer Expenses** which looks at how you can do so.

### Does volunteering affect someone's ability to claim benefits?

No, it should not. Some people believe they can only volunteer for 16 hours a week if you are in receipt of benefits. This is not the case. A volunteer is not limited to an amount per week or month, provided that they continue to meet the conditions of their benefit(s). However, it is essential that a volunteer only receives actual out-of-pocket expenses, rather than a reasonable pre-estimate, unless the volunteer pays back any surplus money after the expense has actually been incurred. The volunteer will need to inform JobCentre

Plus that they are volunteering, and provide details of the expenses for which they are being reimbursed. This is the responsibility of the individual, and not the organisation where they are volunteering. You may wish to include a statement to this effect on any information given to the volunteer about their role. JobCentre Plus have published a guide, [Volunteering While Getting Benefits](#) which you can access for more information.

## **Are volunteers protected from discrimination, harassment and victimisation in the same way as employees?**

No, not exactly. Volunteers are not protected by law in the same way as paid employees. The Equality Act 2010 applies to employees and organisations providing a service. Volunteering could be considered as a service and as such organisations involving volunteers should still protect volunteers from discrimination, harassment or victimisation on the grounds of the protected characteristics. We have produced a guide for ***Creating an Inclusive Volunteer Environment*** which you can access for more information.

## **Should organisations request disclosure checks for volunteers?**

Voluntary groups working with children and vulnerable adults should not check every volunteer with Disclosure Scotland. Checks should only be made for roles that meet the eligibility criteria. If an application for a check is not justified, you could be breaking the law, as well as creating unnecessary bureaucracy. As with paid staff, you should not have a 'one approach suits all' policy of checking all volunteers, as this is contrary to Disclosure Scotland's code of practice. CRBS Disclosure Services can offer advice to voluntary groups and organisations.

## **How should organisations or groups deal with challenging volunteer situations?**

You should use procedures that are specific to volunteers. You do not employ volunteers and should therefore avoid using employment terminology such as contract, termination, disciplinary or grievance. You should have a procedure for dealing with concerns by and about volunteers where issues will be addressed by the volunteer co-ordinator with a right of appeal to the chief executive or to one of the trustees. However, bear in mind that you should not, for instance, say to volunteers that not turning up for a agreed task will lead to action being taken under your internal procedures, as this would be putting volunteers under an obligation to attend.

In reality, of course, if a volunteer repeatedly fails to show up you may decide not to end the volunteering arrangement if there is one, or offer them alternative roles that can be undertaken on an 'as and when' basis. We have produced a guide for ***Managing Challenging Volunteer Situations*** which you can access for more information.

## **Could a volunteer sue an organisation or group for unfair dismissal?**

Not if you are operating within these guidelines and you are not providing payment or anything of value for volunteer services. A volunteer is not an employee and will not be able to bring a claim for unfair dismissal. It is important to be aware of blurring the boundaries, for example an organisation that requires volunteers to repay training costs if they do not volunteer for a minimum number of hours, has entered into a contractual agreement with their volunteer.

## **What about volunteers bringing claims for discrimination?**

If you have followed these guidelines, volunteers will not be in a formal legal contractual relationship with you and so will not be employees within the wider meaning of discrimination legislation. Volunteers are still considered to be protected by law as a service an organisation provides, although this is yet to be proved in court. Consequently, organisations should follow guidelines of the Equality Act 2010 and avoid any form of discrimination. We have produced a guide for ***Creating an Inclusive Volunteer Environment*** which you can access for more information on volunteering and the Equality Act.

## **What about health and safety responsibilities?**

Health and safety legislation is designed to protect employed staff rather than volunteers. However, volunteers should be treated the same as paid workers. It is an organisation's responsibility to ensure that a volunteer workplace is safe, that effective health and safety policies and procedures are in place and understood and that activities do not pose an unacceptable level of risk. You should have risk assessments for each role, adequate training to ensure volunteers understand how to perform their role safely, trained first aiders on site, first aid kits, appropriate protective clothing and effective accident and emergency procedures. You may consider having policies such as 'volunteer lone working' policies if appropriate. We have produced a guide for **Volunteer Health and Safety** which you can access for more information.

## **Do organisations need to have insurance in place for volunteers?**

Yes, you should make sure that your insurers are aware that you have volunteers within your organisation or group. This means that you are covered both for any claims that may be brought if a volunteer should become injured, and for any claims that could be brought against you because of the actions of a volunteer (for instance, if a volunteer adviser gave negligent advice). Some insurers may ask for copies of your volunteer role descriptions and risk assessments and may put an upper or lower age limit on "workers" they will insure under professional indemnity cover, so beware of this if you have young or older volunteers. The minimum you should have in place is employer's liability insurance, public liability insurance and where relevant motor insurance.

Depending on the type of volunteering activity, the volunteer involving organisation may also need professional indemnity insurance. This is recommended for volunteer involving organisations where volunteers are involved in the provision of information, advice or other professional services. We have produced a guide for **Volunteer Insurance** which you can access for more information but we would advise you to contact your insurer for more information.

## **Can you explain about motor insurance?**

If an organisation owns or operates motor vehicles, it must comply with the provisions of the Road Traffic Act. This makes it compulsory to have insurance against third party injury and property damage. If trustees, employees or volunteers are using their own vehicles for the purposes of the organisation or on the business of the organisation, the organisation must make sure that the insurance held by the owner of the vehicle covers such use. Any additional premiums that are required to an existing insurance cover may be met by the organisation. If a driver has an accident during their volunteering and there is a problem with the insurance for that vehicle, the organisation or group could be held responsible, regardless of who owns the vehicle. There are special requirements in relation to minibuses used to transport people, and insurers should be able to advise organisations. The Association of British Insurers (ABI) has published a list of insurance companies showing how they classify volunteers who drive their own car for the benefit of the community.

## **Are organisations required to follow data protection law?**

Volunteer involving organisations by law must follow data protection law. The Information Commissioner's Office (ICO) has created specific advice and guidance for charities regarding data protection.

## **Reviewing your policies and procedures**

You should set aside time to regularly to review your legal responsibilities. This should be done at all levels of the organisation or group. Independent legal advice should always be sought if you have any doubts or concerns.



## **Need some more help?**

If you would like more help or advice in relation to this guide please get in touch with us:

- Telephone: 01851 700366
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- Website: [www.volunteeringwesternisles.co.uk](http://www.volunteeringwesternisles.co.uk)

**Based on Volunteering and the law by Volunteer Scotland.**