

VOLUNTEERS & THE LAW

INFORMATION SHEET

Volunteers are not employees. Volunteer involving organisations should be pro-active in ensuring that the policies and practices which define their relationships with volunteers are consistent with the voluntary, informal nature of volunteering. This information sheet looks at the relationship between volunteers and employment law and outlines some ways to help volunteer involving organisations get the balance right.

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1. Summary of the Main Issues for Volunteers and the Law

- A contract of employment can exist without a written document. For a contract of employment to exist there needs to be '**consideration**' (the individual and the organisation exchange something of material value) and '**intention**' (the individual and the organisation intend to enter into a legally binding contract).
- Case Law has provided examples of situations where policies and practices by an organisation has been deemed to be an employment relationship and therefore employment law relevant. There are also examples of where organisations have clear policies and practice differences for a 'volunteer' and 'employee', which has prevented a court from deciding that a contract of employment exists and therefore court proceeding unnecessary.
- While your organisation might be concerned about entering into a contract situation with volunteers it is still important that organisations manage volunteers well. There are some practical ways to minimise the risk of contract situation.
- Volunteers are not protected by anti-discrimination laws such as the Disability Discrimination Act in the way that a paid employee is.
- The 'services' and 'facilities' of Volunteer Centres come within the statutory provisions that prohibit discrimination when providing goods, facilities and services to the public. Therefore, it is essential for Volunteer Centres to ensure that they do not discriminate on the grounds of religion or political opinion, sex, disability, race or sexual orientation.
- Volunteer involving organisations by law must abide by data protection law. This includes the paper and computer based information they hold about volunteers.

2. General Legal Standing of Volunteers

The nature of the relationship an organisation has with its volunteers is usually examined in three circumstances. These are, when a volunteer has a grievance, when an existing volunteering relationship breaks down or when something changes in the relationship. What these three reasons have in common is that they are all reactive and bring the legality of the volunteer relationship into focus. In order to ensure good practice and protect volunteers and itself, an organisation should be pro-active in ensuring that the policies and practices which define its relationship with its volunteers are consistent with the voluntary, informal nature of volunteering.

Volunteers are not employees and should not be treated as such. Volunteers come to your organisation with very different motivations than employees. They are not concerned with a pay packet or financial gain. One of the strengths of volunteers is their flexibility and most volunteers prefer a more casual relationship with the organisation they are involved with, free from the obligations and bureaucracy that comes with employment. **Organisations should avoid entering into a situation where individuals who they regard as 'volunteers' are actually classed as 'employees' by law and therefore entitled to employment rights.** Yet organisations need to have

structures and documentation to help them effectively manage volunteers. This information sheet looks at the relationship between volunteers and employment law and outlines some ways to help volunteer involving organisations get the balance right.

3. The Difference between Employment and Volunteering

An 'employee role' rather than a 'volunteer role' exists if any of the following conditions are met:-

An individual has a contract of employment. A contract does not have to be a written document. It refers to the relationship between the individual and the organisation. In order for a contract to exist there are two legal conditions which must be met. These are **consideration** and **intention**. Consideration, intention and other related concepts are explained below:

Consideration

The individual and the organisation exchange something of material value. The value of what is exchanged can be minimal.

Intention

The individual and the organisation intend to enter into a legally binding contract i.e. they can each go to court to enforce their rights. Intention is usually implied by looking objectively at all the circumstances.

Obligation

The employer has an obligation to provide work and the employee has an obligation to do the work.

Employment Rights

An employee has protection from unlawful discrimination across equality grounds, i.e. age, race, sex, religion, politics or disability. Employees also have protection against unfair dismissal and unfair redundancy. Employees have rights to sick pay, maternity leave, trade union activity, holidays and the national minimum wage.

4. Some useful Case Law

Under employment law an individual is deemed an 'employee' not a 'volunteer' if a contract of employment is seen to exist. The following cases are examples of how the relationship between an individual and organisation has been scrutinised and defined by a court of law. Examples have been provided for both cases where an employment relationship and therefore employment rights have been deemed to exist as well as not deemed to exist.

Armitage v Relate 1994

Mrs Armitage was a volunteer counsellor for Relate and claimed for racial discrimination. A tribunal ruled that she was an employee and allowed her case to be heard. The ruling was based on the facts that:

- Relate conducted a rigorous training process including a day long residential. Mrs Armitage was **required** to refund part of the training expenses if she did not provide a minimum of 600 hours of counselling;

- Mrs Armitage was **required** to provide a minimum amount of hours each week;
- After three years of training volunteer counsellors could become paid employees or hired for sessional work.

The tribunal based its ruling largely on the **requirement** to repay training, the **obligation** to work a minimum of 600 hours and the fact the training **led to paid work**. This was seen as a clear case of the exchange of something of value i.e. consideration.

Chaudri v Migrant Advice Service (MAS) 1997

Mrs Chaudri did voluntary administrative work for MAS for two years and claimed for racial and sexual discrimination. A tribunal decided that she was an employee and allowed her case to be heard. The ruling was based on the facts that:

- Mrs Chaudri incurred no expenses during the course of her volunteering as she lived nearby, walked to the office and had lunch at home;
- Nevertheless she received a flat rate of £25 per week to cover expenses;
- This was increased to £40 and she was paid expenses when she was sick or on holiday.

The 'expenses' payments are clearly consideration. Regularly paying these amounts, including holidays and sick leave, meant they became wages for employment.

Gradwell v CVS Blackwell, Wyre and Fylde 1997

The tribunal decided that an employment contract had not been created based on the fact that although volunteers all signed a written agreement:

- Volunteers were not obliged to attend training and monthly meetings.
- There was no other minimum time commitment required of volunteers.
- Volunteers were reimbursed for actual expenses only.

The tribunal decided that repayment of genuine expenses and the provision of training did not amount to a 'consideration'. They also decided that even though the agreement was written it was not intended to be legally binding.

Murray v Newham Citizen's Advice Bureau 2000 (EAT)

Mr Murray had appealed a decision that his volunteering with Newham Citizen's Advice Bureau did not amount to a contract of employment. In this case the Appeals Tribunal found in his favour on this issue. The decision was based on a written agreement which in the view of the tribunal set out a range of obligations and commitments on both parties. The agreement included:

- Time commitments of a minimum time period;
- Time periods to complete basic training;
- Grievance and Disciplinary process;
- Expenses;
- Commitments such as the process for claiming holidays.

The Tribunal looked at the overall relationship between the organisation and the volunteer and concluded that while there was no one significant issue as in the *Relate* or

the Migrant Advice Service case there was an agreement between the two parties which was enough to create a contract of employment.

South East Sheffield Citizens Advice Bureau (CAB) v Grayson 2004

Mrs Grayson had brought a complaint under the Disability Discrimination Act that CAB had discriminated against her on the grounds of her disability. It is relevant to volunteering because at the time of the complaint the Disability Discrimination Act only applied to organisations with 15 employees (this has since changed). At the time the CAB had only 11 employees but the case was based on the claim that some of the volunteers engaged in the work of the CAB were also employees. The original Tribunal ruled in Mrs Grayson's favour but on appeal the judgement indicated that the volunteers were not employees and so the Tribunal had no jurisdiction to hear Mrs Grayson's application. The decision was based on:

- The volunteer agreement was unsigned and stated only that it existed to "clarify reasonable expectations of both the volunteer and the bureau";
- Reasonable expectations in relation to the usual minimum commitment of time did not amount to a legal obligation; there was no sanction against volunteers who did not do it;
- The reasons for asking for this usual minimum commitment was to allow the bureau to make the most of its resources and it was reasonable for it to do so;
- The payment of expenses incurred was seen by the Tribunal as being "unsurprising" and it was impressed by the Bureau's commitment to do so. This did not amount to an obligation for the Bureau to provide or the volunteer to carry out work - a key issue in reaching the decision;
- The Tribunal regarded the provision of expenses and the agreement by the Bureau to indemnify advisors against negligence claims as evidence of a unilateral contract sometimes called an "if" contract. "If you do any work for the Bureau and incur expenses in doing so, and suffer a claim from a client you advise, the Bureau will indemnify you against your expenses and any such claim". This contract still does not impose any obligation on the volunteer to do the work for the Bureau.

X -v- Mid-Sussex Citizen Advice Bureau 2009

This was a case under the Disability Discrimination Act, but the issue applies equally to the other grounds and laws too. The ultimate finding was that volunteers are not protected by the Disability Discrimination Act, or by any of the other anti-discrimination laws. In this case, the complainant, who was a volunteer for the CAB and was told her services were no longer needed. The complainant alleged that being a volunteer is an *occupation*, and so is covered by the EC Framework Employment Equality Directive, which prohibits discrimination in employment and *occupation* on the grounds of disability, age, religion and sexual orientation. The employment tribunal rejected this argument.

The complainant appealed to the Employment Appeals Tribunal. The president of the Employment Appeals Tribunal, Mr. Justice Burton, rejected the argument. He found that the use of the word "*occupation*" in the Directive is not intended to include unpaid employment of the volunteering type within its scope.

The complainant argued further that doing the work of a volunteer put her in an advantageous position to obtain paid employment with the CAB, and thus it could be said to fall within the *arrangements made by the CAB for determining who to offer employment*. These words appear in all the anti-discrimination laws to describe the recruitment activities in which employers must not discriminate (e.g. job descriptions,

personnel specifications, advertising, shortlisting, interviewing, etc). The judge pointed out that this is mixing up *purpose* and *possible consequence*. A person who volunteers may get a paid job with the organisation later, but that is only a possible consequence of the experience and knowledge they gain in the course of their service. It is not the actual purpose of the service in the first place.

Update 19 Dec 2012: Supreme Court Ruling-The Employment Appeal Tribunal agreed, and the Court of Appeal later upheld that decision that Mrs X was not entitled to bring an employment tribunal claim because she was not an employee. Mrs X took the case to the Supreme Court. The Supreme Court ruled that European law clearly states that protection from discrimination in the workplace does not extend to volunteers. It turned down her application to take the case to Europe.

Beattie v Charis Cancer Care Ltd and Friends of Charis Ltd 2017

This was a complicated situation where the claimant was both a volunteer in the charity shop and a paid employee as a fundraiser. Her claim was for constructive dismissal from her purported employment status as a shop manager. This role had grown from a small informal beginning to be a substantial time commitment on top of her salaried position as a fundraiser and the tribunal found that the claimant and her husband were the dominant force within the shop. However, the tribunal found that. "As a result of its findings about the absence of a formal structure regarding the management of the shop, the tribunal concludes that the claimant was not employed...therefore could not be dismissed by it constructively or otherwise from a job which does not exist." The tribunal ruled that the work that Mrs Beattie did in the charity shop was in the capacity of a volunteer and not a staff member and therefore could not have been constructively dismissed.

5. Practical ways to Minimise the Risk of a Contract Situation

While your organisation might be concerned about entering into a contract situation with volunteers it is still important that organisations manage volunteers well. Structures and documentation form an important part of this process. The effective management of volunteers does not have to mirror your employment practices. There are some practical ways to minimise the risk of contract situation.

Reduce the formality of your documents

It is good practice for volunteers to be provided with documentation to help them carry out their role. Look at the documents you give to your volunteers. Is the language used formal or similar to employment documents? Volunteers' documents should be less formal and more in tune with the voluntary nature of the relationship. For example, it is good practice for volunteers to have recourse if they have a complaint or to develop a structure to deal with a problem. However the process does not have to be as detailed as that you would use for employees.

Review the language you use

Avoid using language that is indicative of employment e.g.:

- 'Volunteer agreement' not 'contract'
- 'Volunteer role' description not 'job description'
- 'Reimbursement' not 'payment'
- 'Arrangements if there are problems' not 'disciplinary procedures'

- ‘Arrangements if you have a complaint’ not ‘grievance procedure’
- A *volunteer agreement* is the main tool for setting the nature of your organisation’s relationship with each volunteer. When outlining what you would like volunteers to do, talk about ‘expectations’ and ‘intentions’ as opposed to ‘requirements’ and ‘obligations’. For example, ‘as you indicated you will be available to volunteer for 2 hours per week on Monday’, rather than ‘you will be required to work 26 hours per week on Monday’.

It is worthwhile stating on volunteer agreements that the agreement is binding in honour only and not intended to be legally binding. However this will not protect you if in practice an employment relationship exists. It is also important to consider whether or not the document is signed, in practice if it is intended to be binding in honour only then it does not need to be signed. For more information see the [Volunteer Agreement Information Sheet](#), available from www.volunteernow.co.uk.

Reimburse actual expenses only

It is good practice to reimburse volunteers for out of pocket expenses. Reimbursing genuine out of pocket expenses is not a ‘consideration’, which is one of the conditions to assess whether an employment contract exists. For more information see the [Volunteers and Expenses Information Sheet](#) available from www.volunteernow.co.uk

6. The Responsibilities of Volunteer Centres

A key role of a Volunteer Centre is to match individuals seeking to do voluntary work with voluntary organisations who are seeking to recruit volunteers. These ‘services’ and ‘facilities’ clearly come within the statutory provisions that prohibit discrimination when providing goods, facilities and services to the public. In Northern Ireland protection from discrimination in accessing goods, facilities and services is bound by law (see appendix 2 for the anti-discrimination laws and the statutory equality grounds). Therefore, it is essential for Volunteer Centres to ensure that they do not discriminate on the grounds of religion or political opinion, sex, disability, race or sexual orientation. For example, under the Disability Discrimination Act 1995, service providers have a duty to make reasonable adjustments to help disabled people to use the services in question.

This may require the service provider to change any practices, policies or procedures, or the physical features of premises, if they make it impossible or unreasonably difficult for disabled people to use or access a service. For example, if the Volunteer Centre provides written information, such as leaflets and brochures, to its service-users it should provide that information in alternative formats too, such as in large print or in Braille where it is reasonable to do so.

If a Volunteer Centre premises are open to visits from the general public then reasonable steps should be taken to ensure that they are accessible for all potential users. Volunteer Centres should take appropriate action to promote fair and equal access and an equality of opportunity to all. In addition, if the Volunteer Centre is part funded by a Public Authority then that Authority may seek to ensure that the Centre operates procedures consistent with its own duties in relation to Section 75 of the Northern Ireland Act 1998.

Generally health and safety legislation is aimed at protecting employees rather than volunteers. However, the law does require organisations to protect other individuals

(including volunteers, customers and members of the public) from risks to their health and safety arising out of the organisation's activities. The organisation is required to identify and undertake measures which are proportional to the risks involved. In general a volunteer should receive the same or similar protections that a paid employee undertaking the same activity would enjoy. This is because it is likely that the organisation will owe the volunteer a duty of care. Breach of this duty which results in loss to the volunteer could lead to a successful negligence claim. A further risk for organisations is the offence of corporate manslaughter which was introduced in 2007 and makes it easier for authorities to successfully prosecute organisations where a corporate management failing has led to death. Senior management need to ensure that they have adequate processes for health and safety and risk management in place.

7. Data Protection

Volunteer involving organisations must abide by data protection law (GDPR) and follow all the principles that are outlined for all organisations or businesses processing personal data. This includes the effective management of any paper or computer based information they hold about volunteers. See Appendix 1 for guidance.

8. Intellectual Property

If an employee carries out work on behalf of an organisation the work carried out is automatically the intellectual property of the employer under *Copyright, Designs and Patents Act 1988*. This Act states that materials produced by employees belong to their employer. However because a volunteer does not have a contract of employment within an organisation there is no automatic transfer of intellectual property rights from a volunteer to an employer. This might seem like a trivial issue, but there have been cases where volunteers have been producing original work for important publications such as annual reviews, reports, photos, sound recordings, website development etc., but following disputes with their organisations have refused to allow them to use their work.

If relevant to the work carried out by volunteers, an organisation should consider including a statement within the Volunteer Policy or Handbook that sets out the understanding that the intellectual property rights of original work produced by volunteers is always transferred to the employer.

9. Immigration Law

A visitor may undertake volunteering provided it lasts no more than 30 days in total and is for a charity that is registered with either the Charity Commission for England and Wales; the Charity Commission for Northern Ireland; or the Office of the Scottish Charity Regulator. (To be implemented in law from 01.12.20)

Thanks to the Equality Commission for Northern Ireland for their help in the production of this information sheet.

For further information on equality law in Northern Ireland visit
www.equalityni.org.

10. Appendices

Appendix 1: Data Protection

Organisations have responsibilities to abide by the Data Protection legislation. The General **Data Protection** Regulation (GDPR) came into effect on 25 May **2018**. A key European Union **legislation**, it gives people more rights over what organisations can do with their personal **data**. It applies across all EU member states, including the UK and will be applicable post Brexit.

Under the regulation, businesses that store and process personal data must do so lawfully, transparently, for a specific purpose and for no longer than necessary. Volunteer involving organisations are not exempt - if you process any amount of personal data, you must **comply with the GDPR**. Much of the new law builds on the previous data protection rules, so it may not seem radically different. However, parts of the regulation introduced **greater rights** for EU citizens and significant **new requirements** for organisations that process personal data.

Six Principles for Processing of Personal Data

Data protection principles underpin the new GDPR. These principles set out obligations for businesses and organisations that collect, process and store individuals' personal data. These principles relate to:

- 1. Lawfulness, fairness and transparency** - you must process personal data lawfully, fairly and in a transparent manner in relation to the data subject.
- 2. Purpose limitation** - you must only collect personal data for a specific, explicit and legitimate purpose. You must clearly state what this purpose is, and only collect data for as long as necessary to complete that purpose.
- 3. Data minimisation** - you must ensure that personal data you process is adequate, relevant and limited to what is necessary in relation to your processing purpose.
- 4. Accuracy** - you must take every reasonable step to update or remove data that is inaccurate or incomplete. Individuals have the right to request that you erase or rectify erroneous data that relates to them, and you must do so within a month.
- 5. Storage limitation** - You must delete personal data when you no longer need it. The timescales in most cases aren't set. They will depend on your business' circumstances and the reasons why you collect this data.
- 6. Integrity and confidentiality** - You must keep personal data safe and protected against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

GDPR provides the following rights for individuals:

- 1. The right to be informed** – fair processing information, transparency over how their data will be used, e.g. privacy statement.
- 2. The right of access** – access to personal data and how it is being used and processed, e.g. subject access request.
- 3. The right to rectification** – personal data can be rectified if inaccurate or incomplete. This should be rectified within **one month** of being advised and third parties may also need advised if data has been shared.

4. **The right to erasure** – the right to request personal data be deleted, except where there is a compelling reason for continued processing, e.g. legal obligation, public interest, statistical analysis.
5. **The right to restrict processing** – to permit the storage of personal data, but block or restrict processing, e.g. when accuracy of data is contested. Third parties may also need advised if data has been shared.
6. **The right to data portability** – individuals can obtain and reuse their personal data across different services without hindrance to usability.
7. **The right to object** – objection to direct marketing, processing for legitimate reasons, e.g. public interest, statistical research.
8. **Rights in relation to automated decision making and profiling** – can only be carried out when: fulfilling a contract with the individual, authorised by law or the individual has given consent.

Many organisations hold information about their volunteers in paper and computer-based records i.e. personal details, equality monitoring data. Compliance with the legal obligations in respect of the handling of personal data is the responsibility of the 'data controller'. That is the title given to the person (individual, company or organisation) who decides why personal data is held and the way in which such data is dealt with. A Privacy Policy outlining how you will hold volunteers' information is an important document to be shared with volunteers. An important concept to consider is consent.

Consent

Under GDPR, consent must be freely and explicitly given and opted into by the data subject and should not be implied. The data subject also has the right to withdraw their consent at any time. If this is the case, the individual's data should be deleted as requested.

When gathering personal data, consent to hold and use this data should also be obtained. Evidence of the subject's consent should be saved or recorded. In the case of children (under 18), consent must be obtained from a parent or guardian. If consent is not obtained, one of the other legal bases for processing information may be used. As defined by the Information Commissioner's Office (ICO), **the lawful bases** for processing your information is when:

- Consent of the data subject is given;
- Processing is necessary for the performance of a contract with the data subject or to take steps to enter into a contract;
- Processing is necessary for compliance with a legal obligation;
- Processing is necessary to protect the vital interests of a data subject or another person;
- Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
- Necessary for the purposes of legitimate interests pursued by the controller or a third party, except where such interests are overridden by the interests, rights or freedoms of the data subject.

Data Storage, Security and Retention

These rules describe how, where and for how long personal and special category data should be safely stored. When data is **stored on paper**, it should be kept in a secure place where unauthorised people cannot access it. These guidelines also apply to data that is usually stored electronically but has been printed out for some reason:

- When not required, the paper or files should be kept in a **locked drawer or filing cabinet**.
- Employees should make sure paper and printouts are **not left where unauthorised people could see them**, e.g. on a printer.
- **Data printouts should be shredded** and disposed of securely when no longer required.

When data is **stored electronically**, it must be protected from unauthorised access, accidental deletion and malicious hacking attempts:

- Data should be **protected by strong passwords** that are changed regularly and never shared between employees.
- **Encryption** should apply, not only to transferred data but to data held.
- If data is **stored on removable media** (like a CD, DVD or USB), these should be kept locked away securely when not being used.
- Data should only be stored on **designated drives and servers**, and should only be uploaded to an **approved cloud computing services**.
- Servers containing personal data should be **sited in a secure location**, away from general office space.
- Data should be **backed up frequently**. Those backups should be tested regularly, in line with the company's standard backup procedures.
- Data should **never be saved directly** to laptops or other mobile devices like tablets.
- All servers and computer containing data should be protected by **approved security software and a firewall**.
- Where any data is shared with a third party, e.g. an IT provider, a **data sharing agreement** must be in place.

In terms of **retention of volunteers' data** you need to go back to the principles and think about why you need to keep volunteers' personal data in the first place and remember that you must not keep it longer than you need to. The law is not prescriptive about timescales as each organisation will be different so volunteer involving organisations need to give this some thought and make a policy decision on what is reasonable retention periods for them.

Appendix 2: The anti-discrimination laws

In Northern Ireland protection from discrimination in accessing goods, facilities and services is provided in the following legislation:

- **Sex Discrimination (NI) Order 1976**
These laws prohibit discrimination and harassment on the grounds of sex; Pregnancy; gender reassignment; marital or civil partner status.
- **Fair Employment & Treatment (NI) Order 1998**
This law prohibits discrimination and harassment on the grounds of religious belief and political opinion.
- **Disability Discrimination Act 1995**
This law prohibits discrimination and harassment against disabled persons.
- **Race Relations (NI) Order 1997**
This law prohibits discrimination and harassment on the grounds of race; colour; ethnic or national origins; nationality; belonging to the Irish Traveller community.
- **Employment Equality (Sexual Orientation) Regulations (NI) 2003**
This law prohibits discrimination and harassment on the grounds of sexual orientation.

Service providers who are public authorities are also subject to **Section 75 of the Northern Ireland Act 1998**. In carrying out their work, public authorities must have due regard to the need to promote equality of opportunity and good relations on a number of grounds. They must equality impact assess their policies and consult with those affected by their policies, including service users.

Reasonable precautions have been taken to ensure information in this publication is accurate. However it is not intended to be legally comprehensive; it is designed to provide guidance in good faith without accepting liability. If relevant, we therefore recommend you take appropriate professional advice before taking any action on the matters covered herein. A Charity (Inland Revenue) No. XT22896 Company Limited by Guarantee No. NI602399 Registered in Northern Ireland