

# Neath Port Talbot Council for Voluntary Service

Your local county voluntary council



## 4. Volunteers

### 4.11 Volunteers and the law

#### **Volunteer or employee?**

Normally volunteers have very few legal rights, unlike paid staff who have a wealth of protection under employment legislation and can claim such things as unfair dismissal, race, disability and sex discrimination, equal pay, and minimum wage etc. Some organisations however, unknowingly create contracts of employment in the way they engage with volunteers. This may make it possible for volunteers to pursue legal action when they feel they have a grievance.

In deciding whether or not a contract exists, and hence, whether a case can be brought under employment law, a tribunal will look at such things as expenses, training, the expectations an organisation has of its volunteers, and the way their relationship is documented. These areas have the potential for a contract to be created.

In order for a contract to exist the volunteer and the organisation have to exchange something of value – this is known as the **consideration**. In reality, this comes down to whether an organisation is providing something of value to the volunteer, such as paying more than out of pocket expenses, flat rate or sessional fees, one-off payments and honoraria, or offering some other perk such as shop discounts, free or discounted access to events and services, or training beyond what is needed to enable the volunteer to carry out their duties.

The second consideration of a contract is **intention** - whether the volunteer and organisation intend that their agreement is legally binding, i.e. that they can go to court to enforce their rights. This would be determined by looking at the payments the volunteer received and whether there was an obligation to work such as a minimum hours requirement. Most volunteering lacks 'intention' and this stops it amounting to a contract.

#### **Payment of expenses**

Paying volunteers' out-of-pocket expenses is good practice 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 amounts that have 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.

## The tax and benefits system

The Inland Revenue and the DSS recognise the following types of expenses as being legitimate:

- travel to and from the place where the volunteering activity takes place
- travel during the course of volunteering
- meals taken during the course of volunteering (up to £5 is recognised as reasonable)
- postage and telephone costs
- care of dependants during the period of voluntary work
- the cost of protective or specialist clothing

The IR and DSS are happy as long as the expenses paid to the volunteer are the actual costs incurred and are at a 'reasonable' rate, e.g. mileage rates should be within accepted IR limits. Payment should be subject to volunteers providing receipts of expenditure.

### Inland Revenue mileage rates

There is a single rate recommended by the Inland Revenue for reimbursing mileage rates. Any payment above this will be liable to tax. The current rates for 2011/12 are:

| IR mileage rates 2011-12                                  | Cars/<br>vans | Motor<br>cycles | Bicycles |
|---|---------------|-----------------|----------|
| On the first 10,000 miles in the financial year, per mile | 45p           | 24p             | 20p      |
| On each additional mile over 10,000 miles                 | 25p           | 24p             | 20p      |
| For each passenger carried                                | 5p            | NA              | NA       |

### 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 such things as free membership or goods in

exchange for a period of service. But the occasional thank you such as a party 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 would almost certainly be considered to be 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 where volunteers are inadequately trained. However, where training is available which is not related to the tasks but is instead for volunteers' personal benefit, particularly where this is seen by volunteers as a right, this can amount to **consideration**.

## Use of 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 probably wise to avoid using language which has legal implications. These include words like 'contract', 'job description' 'employer' etc which can be replaced with alternatives such as 'agreement', 'task or role description', 'organisation'. Say that you 'hope' volunteers will do something rather than that they 'will be required to'.

## 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 slipping over into one which could be considered as 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.

## Intellectual property rights

One question which has arisen recently is 'who owns the copyright to volunteers' work?' 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 genuine volunteering arrangement there is no such implied transfer of copyright.

A situation may therefore arise where if a charity falls out with a volunteer, the volunteer may withdraw his or her consent to the charity using the copyright 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 if that material has to be extracted. 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. **Summary**

Most volunteer/organisational relationships end amicably, although a few successful legal cases indicate that there are some simple pitfalls that can be avoided to reduce the possibility of volunteers wanting to take further action. It does not mean that organisations should rush to re-write all of their policies or jettison all of the good practices that have developed around volunteering. Very few cases are proved simply on the use of 'legal' terminology or the existence of policies which are similar to those for employees. The law will look at 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:

- Do what you can to make sure that volunteers are treated fairly and have access to good procedures for settling disputes.
- Make it clear that the roles of volunteers are voluntary, i.e. unpaid.
- 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.
- Consider the legal implications of offering volunteers perks such as free membership, gifts, goods, services etc.

## Further information

HM Revenue and Customs

[www.hmrc.gov.uk](http://www.hmrc.gov.uk)

Department of Work and Pensions

[www.dwp.gov.uk](http://www.dwp.gov.uk)

VolResource

[www.volresource.org.uk](http://www.volresource.org.uk)

### 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.

### For further information contact

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