

# Wales Council for Voluntary Action

Supporting charities, volunteers and communities

## 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 make a legal case on the basis of unfair dismissal, race, disability and sex discrimination, unequal pay, and minimum wage etc. It is possible, however, to unknowingly create a contract of employment in the way an organisation engages with volunteers. This may make it possible for volunteers to pursue legal action when 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, paying 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 carry out their volunteering activities for minimum number of hours. Most volunteering lacks 'intention' and this prevents it from amounting to a contract.

#### **Reimbursement of expenses**

Reimbursing volunteers' out-of-pocket expenses is good 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.

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. 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 is likely to 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 if volunteers are inadequately trained. However, where training is available which is not related to the volunteer role 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 wise to avoid using language which has legal implications. Words such as 'contract', 'job description' 'employer' etc can be replaced with alternatives: 'agreement', 'task or role description', 'organisation'. Say that you 'hope' volunteers will do something, or that 'volunteers normally....', 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.

An [example of a volunteer agreement](#)

## **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 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. 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 remain amicable, although a few successful legal cases indicate that there are some pitfalls that can be avoided to reduce the possibility that volunteers will want to take further action.

Although there are very few cases 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.
- Make it clear that the roles of volunteers are voluntary, and 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.
- 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

The [Investing in Volunteers Standard](#) (Indicator 1.3) requires that there is a clear policy on the reimbursement of volunteers' out of pocket expenses, which is rooted in the organisational ethos and which takes account of the organisation's financial situation. Also (Indicator 6.1) volunteers are to be given clear information about what they can expect from the organisation and what the organisation's expectations are.

See also:

Information sheet 4.8 [Keeping volunteer safe](#)

Information sheet 4.9 [Safeguarding and good management practices](#)

Information sheet 4.13 [Volunteer expenses](#)

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)

[Volunteers and the Law](#) by Mark Restall, Volunteering England, June 2005

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**Last Updated:** 14/09/2016