



## Volunteers, Legal Issues and Best Practice

### Introduction

With increasing numbers of individuals being encouraged to volunteer to support the activities of the BEF, it is essential that all member bodies have some understanding of the legal implications and best practice relating to volunteer involvement. This document highlights some of the key areas which should be considered. For more details please contact Gill Barham on [gill.barham@bef.co.uk](mailto:gill.barham@bef.co.uk).

### Volunteers and employment law

A 'volunteer' is usually considered to be an individual who, of their own free will, gives their time to support an organisation free of charge and with no expectation of remuneration. A key danger, when involving volunteers, is that they will be considered in the eyes of the law to be either "contract workers" or even employees. A contract worker has the right, amongst other things, to the minimum wage and is covered by anti-discrimination legislation and the restrictions on hours of work in the Working Time Directive. On top of that an employee has a wide range of employment rights which may enable the employee to claim large amounts of compensation if they are breached. There have been several cases over recent years where volunteers have or have attempted to take organisations to an employment tribunal, claiming compensation, for instance, for unfair dismissal, constructive dismissal or discrimination, or minimum wage payments for their activities.

In order to avoid such an occurrence, the relationship between an organisation and the volunteer should be carefully managed to ensure that no contractual relationship is implied or formed, which could potentially lead to an individual claiming to have such rights. Simply avoiding written contracts is not enough – in the eyes of the law such a relationship can be formed even if a written contract cannot be identified.

There is a potential risk that a volunteer could claim they have employment rights if for instance:

- 'Volunteers' receive payments that are over and above the reimbursement of genuine out-of-pocket expenses which are supported by receipts e.g. flat rate payments, lump sum payments, regular or expected honoraria etc.
- 'Volunteers' are required to give a specified amount of time in return for something that is provided to them e.g. a training course not necessary to the work they do requiring a minimum 'volunteering' commitment of 6 months.
- 'Volunteers' are given something of substantial economic value in return for their 'volunteering', especially if it is an expected reward e.g. cash, gift vouchers, training or equipment that is unrelated to their volunteering role.



## Best Practice Guidelines

- Ensure that any agreement with volunteers is outlined in terms of mutual expectation.
- Agree reasonable out-of-pocket expenses in advance and ask for receipts and/or completion of an expenses claim form where possible
- Do not offer or give flat-rate or lump sum payments for 'volunteering' services
- Ensure that 'perks' are described as discretionary and not as an enforceable right; take further care to ensure that discretionary perks do not become customary
- Provide training necessary to perform the tasks, but do not go beyond that and give additional unnecessary training that could be seen as a "perk"
- Be as flexible as possible when encouraging volunteers to become involved and express commitments in terms of 'hope' rather than obligation
- Do not impose sanctions if they chose not to perform the task
- Avoid language which may imply contractual obligation e.g. 'job', 'payment', 'must', and use terms such as 'role' or 'opportunity', 'reimbursement of expenses', 'agreement', 'expectation'
- State clearly in any written documents that you do not intend to create a legally binding relationship
- Adopt a Volunteer Charter or Policy to define the relationship between the organisation and the volunteer
- Treat your volunteers fairly and with respect

In the case of paid staff volunteering for events or shows 'on-site', clear distinctions must be drawn between the volunteering role and the paid job, otherwise the Working Time Directive and minimum wage legislation could be applied. If substantial differences are not made clear from the outset, confusion over roles and responsibilities could arise and result in disciplinary issues.

## Health and safety

The Health and Safety Executive advise that in general the same health and safety standards should be applied to voluntary workers as to employees exposed to the same risks. Reasonable steps should therefore be taken to reduce both the likelihood of and severity of injury to volunteers, which could include providing proper information and training, the use of safety clothing, improving supervision etc. Health and Safety issues may be relevant in determining appropriate volunteering roles.

## Liability and insurance

Adequate and appropriate insurance cover should be obtained to cover the financial risk of accidents to or caused by volunteers. The cover provided by insurance companies differs from case to case and it is therefore crucial to check with your insurance company the extent to which volunteers are covered under the terms of public liability, employer's liability, motor vehicle and professional indemnity policies.

### Best Practice Guidelines

- Ensure that volunteers are not placed in situations which may endanger their own or another's physical or mental well-being
- Provide adequate training, management and supervision, which includes giving clear guidance to volunteers on how to report accidents or loss or damage to property
- Clearly define volunteer tasks and responsibilities and communicate these to volunteers and paid staff
- If necessary to the task, provide safe and tested equipment and protective clothing
- Treat volunteers with equal consideration when it comes to health and safety. policy
- Each year check insurance cover to ensure that it provides adequate cover for both volunteers and paid staff

### Child and Vulnerable Adults Protection

The BEF Child and Vulnerable Adults Protection Policy applies equally to employees, contract workers, and volunteers. Criminal record checks can be a valuable safeguard but it should be remembered that they are only ever going to provide information on people with an existing record and furthermore can only provide a 'snapshot' of the situation at the time when the check was carried out. For more information, visit the CRB website: [www.crb.gov.uk](http://www.crb.gov.uk)

### Volunteer Records and Data protection

Personal data relating to volunteers falls into the Data Protection Act 1998 definition of 'personal data' in the same way as employee information. You should therefore follow the same principles as you would with information relating to employees.

### Useful additional sources of information

Volunteering England Managing Volunteers Good Practice Bank:  
[www.volunteering.org.uk/managingvolunteers/goodpracticebank/](http://www.volunteering.org.uk/managingvolunteers/goodpracticebank/)

Sandy Adirondack's free Legal Update Service – to sign up visit [www.sandy-a.co.uk](http://www.sandy-a.co.uk)

### Publications

**Volunteers and the Law** – by Mark Restall, available from Volunteering England

**The Voluntary Sector Legal Handbook** - by Sandy Adirondack and James Sinclair-Taylor