



# **Volunteers and the law**

## **Key issues**

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# A confusing picture?

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- **Volunteers do not have employment rights**
- **Some legislation around screening includes volunteers**
- **Volunteers retain the rights we all share as citizens**
- **In some rare circumstances volunteers can become workers or employees in the eyes of the law**



# Equality Act 2010

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**Brings together previous anti-discrimination legislation.**

**Protects people from discrimination on specified grounds in regards to employment and access to goods and services.**

- **'Protected characteristics'**
- **Defined forms of discrimination**



# Are volunteers protected from discrimination?

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## Under the employment provisions:

- **No, unless they can demonstrate that they were in fact working under a contract**

## In terms of access to services:

- **Highly unlikely**



# Actions of volunteers

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**Organisations may be responsible for discrimination arising from the actions of volunteer**

- **where volunteers are acting under instruction – in effect agents of the organisation**

**Organisations may be liable if a volunteer harasses an employee**

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# Volunteer's liability

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**Equality Act makes employees and agents potentially liable for acts of discrimination that they carry out**

**Protected if they have been told by their organisation that what they are doing is not unlawful**



# Avoiding liability for volunteer's actions

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**Explicitly include volunteers within your Equal Opportunities Policy**

**Discuss general equality issues with volunteers as part of induction, .**

**Have clearly defined role descriptions in place – they will set out the boundaries of volunteers' roles and responsibilities**



# Health and Safety

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## Duty of Care:

The duty of care is a general legal duty on all individuals and organisations to avoid carelessly causing injury.





# Health and Safety

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**Section 3 of the Health & Safety At Work etc Act 1974, imposes a duty on every employer:**

**“to ensure, as far as reasonably practical, that persons not in their employment, who may be affected by their undertaking, are not exposed to risks to their health and safety” and “to give information as might as might affect their health or safety”.**



# Health and Safety in practice

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**Carry out risk assessments (Management of Health and Safety at Work Regulations 1999)**

**Ensure:**

- **that volunteers are adequately trained and provided with relevant information**
- **that volunteers are adequately supported and supervised**
- **that your health and safety policy encompasses and is communicated to volunteers**
- **your insurance cover includes volunteers**



# Compensation Act 2006

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## Deterrent effect of potential liability

A court considering a claim in negligence or breach of statutory duty may, in determining whether the defendant should have taken particular steps to meet a standard of care (whether by taking precautions against a risk or otherwise), have regard to whether a requirement to take those steps might—

- (a) prevent a desirable activity from being undertaken at all, to a particular extent or in a particular way, or
- (b) discourage persons from undertaking functions in connection with a desirable activity.



# Protection of vulnerable clients

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## Duty of care towards vulnerable people

### Criminal Record checks:

- Criminal Record Bureau (CRB) disclosures
- A new system?



# Government Review

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**Announced 22 October 2010**

**Considering the fundamental principles and objectives behind the vetting & barring regime, including;**

**Evaluating the scope of the scheme's coverage;**

**The most appropriate function, role and structures of any safeguarding bodies and appropriate governance arrangements;**

**Recommending what, if any, scheme is needed now; taking into account how to raise awareness and understanding of risk and responsibility for safeguarding in society more generally.**

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# CRB Disclosures

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**Available where the volunteer will be working with children or vulnerable adults on a 'regular' or 'intensive' basis, or overnight.**

**Limited compulsion to check, but there is a duty of care towards clients.**



# Regulated activity

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Teaching, instructing, supervising, caring for or providing children/vulnerable adults with guidance or treatment, driving

School governors

Work with access to vulnerable people in schools, childcare premises (including nurseries), residential homes for children in care, children's hospitals, children's detention centres, children's centres, adult care homes (residential care or nursing homes)

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# Who is vulnerable?

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Under 18, or over 18 and

- is living in residential accommodation, such as a care home or a residential special school
  - is living in sheltered housing
  - is receiving domiciliary care in their own home
  - is receiving any form of healthcare
  - is detained in lawful custody
  - is under the supervision of the probation services
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# Who is vulnerable?

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- is receiving a welfare service defined as the provision of support, assistance or advice by any person, the purpose of which is to develop an individual's capacity to live independently in accommodation or support their capacity to do so
  - is receiving a service or participating in an activity for people who have particular needs because of their age or who have any form of disability
  - is an expectant or nursing mother living in residential care, or
  - is receiving direct payments from a local authority
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# Who must check at the moment?

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## Protection of Children Act 1999

- Applies to 'childcare organisations'
- Must check the criminal records of people in 'regulated positions' (paid or unpaid)

## Care Standards Act 2000

- Applies to organisations that provide healthcare, residential care, domiciliary care



# Disqualification orders

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## Criminal Justice and Court Services Act 2000

List of offences that disqualify people from working with young people (or at least would usually come with a disqualification order) – paid or unpaid

An offence to knowingly offer a 'regulated position' to a disqualified person

An offence for a disqualified person to apply for a regulated position



# What if we just CRB check everyone?

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## Breach of:

- **CRB Code of Practice**
- **Police Act 1997**
- **Data Protection Act 1998**
- **Rehabilitation of Offenders Act 1974**



# Volunteer, worker or employee?

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**While volunteers aren't covered by employment legislation, it can be possible for some volunteers to be seen as workers or employees in the eyes of the law.**

**The key issue is whether or not there is a contract in place.**



# What is a contract?

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## **consideration**

*(money or something of value  
exchanged (in this context) for  
work)*

**+** **intention**

*(was there an intention to create a  
binding agreement?)*



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**A contract in this context could be a**

- **contract for services – a worker**
- **contract of service – an employee**



# Workers

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**A worker is someone who carries out work while under a contract (eg casual workers)**

**Workers are covered by the anti-discrimination legislation, the national minimum wage act and the working time regulations**





# Employees

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**An employment contract is a contract of service**

- **control test – how much control does the organisation have? Hours of work, rules and procedures**
- **mutuality of obligation - obligation to provide work**

**Employees have the right not to be unfairly dismissed, to sick pay etc.**



# Landmark cases

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- *Maria Delourdes Armitage v Relate & others 1994* – 600 hours of counselling or repay the cost – possibility of paid work, and a minimum number of hours counselling per week.
- *Migrant Advisory Service v Mrs K Chaudri* - £25-40 per week. Employment contract like an elephant (you know one when you see one)



# Recent trends

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**Broad view of consideration – not just money**

**The whole relationship being taken into account**

**Murray vs Newham CAB – training, support and reimbursement of expenses, strict minimum time commitments, range of procedures, eg for claiming holiday**



# The Grayson case

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**South East Sheffield CAB v Grayson 2004**

**Original tribunal decision:**

**‘...there was an intention that work would be done by the advisers in return for the payment of expenses incurred and the provision of training, the opportunity to gain experience and the acceptance of legal liability on the part of the bureau for any errors which they may commit in the course of the work done’**



# Employment Appeal Tribunal decision

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**Agreement not signed and ‘to clarify reasonable expectations’**

**‘usual minimum commitment’ an expectation not an obligation**

**Reimbursed expenses, reasonable training and experience are not consideration**



# What 'Grayson' means

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**A clearer idea of volunteering set out**

**Reimbursement of expenses and reasonable training are not 'considerations'**

**Volunteer agreements, policies and procedures are not in themselves signs of a contract**

**'Reasonable expectations' are not contractual obligations**



# But...

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**Organisations do not have carte blanche to require minimum time commitments etc.**

**Flat rate expenses and clear perks will still be considerations**

**It was a decision made on a particular set of circumstances, not on volunteering as a whole**



# Steps to take

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**Avoid payment – money, perks**

**Avoid obligations – ‘you must work for us for 6 months’**

**Mind your language – role not job description, volunteer agreement not contract - expect rather than oblige**

**Keep a distinction – volunteers are equal but different**





# Data Protection Act

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## Personal information on volunteers must be:

- fairly and lawfully processed
- processed only for specified and lawful purposes
- adequate, relevant and not excessive
- accurate and up to date



# Data Protection Act

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- not kept longer than necessary for purpose specified
- processed in accordance with the rights of the data subject
- secure from the point of collection through to disposal
- not transferred to countries without adequate protection of data subjects



# Retention periods

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**Health and safety related info – *at least 3 years***

**Other personal info – *fix a reasonable term***

**CRB disclosures – *6 months, or if relevant until next Care Quality Commission(CQC) Inspection.***

**Organisations regulated under CQC should seek further advice on retention periods**



# Copyright

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**Volunteers keep copyright on the material they produce unless they assign it to the organisation**

**This could include leaflets, designs, articles, photographs, websites, artwork...**

**Copyright can be *assigned*, either for a token sum (50p) or as a deed – an enforceable legal document**

**Licences for limited use.**



# Volunteers from overseas

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## From EU/European Economic Activity countries:

- **No restrictions**

## From outside:

- **Must have a visa status that allows them to work – students, working holiday**

## Refugees/asylum seekers:

- **Fully entitled to volunteer**
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# Expenses, Benefits and Tax

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**Reimburse out of pocket expenses only – ‘sessional payments’, ‘pocket money’ etc are all taxable, affect benefits, and could change the legal status of volunteers.**

- **Travel to/from voluntary work**
- **Travel while volunteering**
- **Meals while volunteering**
- **Post/phone costs**
- **Care of dependents**
- **Cost of protective clothing, special equipment etc**

**Collect receipts, bus tickets etc**



# Benefits rules

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- **All major benefits allow the claimant to volunteer**
- **No hour limits, but must be unpaid – out of pocket expenses only**
  - **Jobseekers Allowance - actively seeking, available for work**
    - » **48hrs notice for job interview, one week's to start work**
  - **Employment and Support Allowance - no restrictions, but distinguish it from paid work!**



# Further information

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[www.volunteering.org.uk/law](http://www.volunteering.org.uk/law)

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