



### **How to avoid creating an employment contract with volunteers:**

History has shown there have been a small number of tribunal cases where volunteers have attempted to *prove contract working* in order to gain access and protection under employment law.

Where a volunteer is deemed to be actually either an employee or a worker, they can be entitled to the following benefits:

- The National Minimum Wage.
- Protection under anti-discrimination and health & safety legislation.
- Paid holiday.
- Statutory sick pay.

This simple guidance note provides some basic help and advice in preventing the creation of employment contracts, but is no substitute for legal advice. **Legal advice should always be sought.**

The essential premise is whether or not a volunteer is working under a contract, but what is the definition of the term *contract*?

An employment contract is a legally enforceable agreement, either oral or written which defines terms and conditions of employment. The contract lists the rights, considerations, intentions, expectations and obligations of both the organisation and the individual. A contract negates at will employment in many cases, and includes stipulations regarding payment, promotions, rewards and terminations.

### **Let's take a look at the key term Payment:**

The payment (also known as consideration) does not have to be substantial to be considered as payment.

This does not mean:

- That volunteers can never receive expenses or training which is relevant and pertinent to their role – but it has to be just that – relevant and pertinent to their role. Make clear that no payment is intended or given or implied for their role, or for the training they undertake.
- That volunteers can never be rewarded. Of course they can..!! Make it clear however that volunteers should never use rewards for their own personal profit. Many groups and organisations reward their volunteers by holding events such as awards ceremonies, recognition parties or dinners. This is acceptable, including the inviting of volunteers and employees to the same event. What can blur the boundary is presenting volunteers with

vouchers or tickets to events that the organisation had to buy, or that could be sold on by the volunteer. Such a reward clearly has an economic value and could be seen as payment.

**Let's take a look at the key term consideration:**

The individual and the organisation agree to exchange something of material value. The material value does not have to be significant to be considered as material.

**Let's take a look at the key term Intention:**

The individual and the organisation intend to enter into a legally binding contract. In other words, they can each go to court and enforce their rights if the need arose.

Cases:

Volunteer NOW have circulated a number of case studies around the issue of volunteering and employment, some of which are detailed below:

***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 these facts:

- 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 £25.00 per week to cover expenses.
- This was increased to £40.00 and she was paid expenses when she was sick or on leave.

***Ruling:***

The expenses payments are clearly deemed consideration. Regularly paying these amounts, including holidays and sick leave, demonstrated such payments as 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 While 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.

***Ruling:***

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 specified for a defined period.
- Time periods to complete basic training
- Grievance and Disciplinary processes.
- Expenses.
- Commitments such as the process for claiming holidays.

### ***Ruling:***

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.

### **Practical hints and tips to avoid creating that *employment Contract*:**

It is vitally important that organisations manage their volunteers well and documentation allied to effective processes ensures that this happens. The management of volunteers does not have to mirror employment practice, and this is key distinguishing feature.

### **Formality:**

Volunteer NOW suggest a regular review of volunteering documents. Is the language used formal or similar to employment documents? Volunteer documents should be less formal and reflect the voluntary nature of the relationship.

### **Language:**

Volunteer NOW argue the importance of appropriate and relevant language within documents:

- Use the term volunteer agreement not Contract of employment.
- Use a volunteer role description not a job description.
- Use the term reimbursement not payment.
- Use the term arrangements for complaints rather than grievance or disciplinary procedures.
- When using the volunteer agreement, use the terms expectation and intention rather than requirement and obligation. More information on Volunteer Agreements is available at [www.volunteernow.co.uk](http://www.volunteernow.co.uk) but most volunteer agreements should contain:
  - A full induction and any training necessary for the volunteer role.
  - Ways in which regular support will be provided to the volunteer in their role.
  - A named contact for volunteer support.
  - The ways in which out of pocket expenses will be reimbursed.
  - How insurance cover is provided.

- How volunteers can view policies on Equalities and Health and Safety.

A volunteer agreement might expect volunteers to:

- Follow policies and procedures relevant to volunteers and the role the volunteer is undertaking. These could include Equality policies, and those relating to confidentiality, data protection and health and safety.
- Meet mutually agreed hopes and expectations around the role.

#### **Expenses:**

It is good practice to reimburse volunteers for any out of pocket expenses. Reimbursing genuine out of pocket expenses is not a consideration, which is one of the conditions used to assess whether an employment contract exists.

#### **Obligations:**

A central feature of an employment contract is an agreement to work a set number of hours at a set time and for a set period. Whilst many groups and organisations need volunteers at a particular time, it is also important to avoid any suggestion that the volunteer is under an obligation to undertake this role. Voluntary means exactly that.

#### **Hopes and expectations:**

Groups and organisations should rather talk about hopes and expectations, with the understanding that volunteers are free to come and go as they wish, and that there are no obligations placed upon them.

#### **Training:**

Only provide volunteers with training that is relevant to the role.

To avoid it being deemed a consideration, training should also be open to all volunteers that undertake that specific role, not just one or two.

As long as these guidelines are followed it should not matter whether the training is in-house, external or accredited.

If you have a question on volunteering contact us at: [info@supportcambridgeshire.org.uk](mailto:info@supportcambridgeshire.org.uk)

Please visit our Resources page at: <https://www.supportcambridgeshire.org.uk/resources/>

#### **Further resources:**

<https://knowhownonprofit.org/people/volunteers/keeping/treating>

<https://www.ncvo.org.uk/component/redshop/1-publications/P103-volunteering-information-sheets-avoiding-creating-employment-contracts>

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