

16 June 2022 – 10am

# Volunteers and the Law

Speaker - Jasmine Sudworth



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# Introduction

**Volunteers do not have same legal rights as staff, rules Supreme Court**

12 Dec 2012 News



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# What we're going to cover today

- The differences between a volunteer and employees & workers
- What creates a contractual relationship with a volunteer, and how to avoid this
- What are the implications of getting this wrong?
- Payments to volunteers, including expenses
- Background checks that you should carry out for volunteers
- Data protection and volunteers



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**Why are volunteers so important?**



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**Figuring out who is who**

Worker?  
Self-employed?  
Freelancer?  
Voluntary worker?  
Employee?  
Consultant?  
Contractor?  
Casual worker?  
Zero-hour employee?

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**Implications of getting it wrong**

- Legal status of individual determines extent of any statutory employment rights
- Employees / workers have certain important legal and statutory rights
- Individuals in "employment" are protected from discrimination under the Equality Act
- Therefore, costs of getting it wrong can be high if leads to subsequent Employment Tribunal claims

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## The definitions - Volunteer

No single statutory definition of volunteer but Police Act Regulations defines Volunteer as- "a person engaged in an activity which involves spending time, unpaid (except for travel and other out of pocket expenses), doing something which aims to benefit some third party other than or in addition to a close relative"

Pretty much identical to definition used by DBS:  
'A person engaged in an activity which involves spending time, unpaid (except for travel and other approved out-of-pocket expenses), doing something which aims to benefit some third party other than, or in addition to, a close relative.'

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## The definitions - Employee

An employee is defined as: "an individual who has entered into or works under a contract of employment"

A contract of employment means: "a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing".

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## The definitions - Worker

A worker is defined as an individual who has entered into or works under either of the following:

- A contract of employment;
- Any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.

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**The definitions -**

**Individuals in "Employment"**

Category of people protected from discrimination, victimisation and/or harassment under the Equality Act 2010.

Definition of "employment" includes employment under a contract of employment, a contract of apprenticeship or a contract personally to do work and so this encompasses:

- Employees.
- Workers.
- A wider category of individuals who are genuinely self-employed, provided that their contract obliges them to perform the work personally i.e. if they are not permitted to sub-contract any part of the work or employ their own staff to do it.

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**Are volunteers covered?**





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**Is there a contract?**

1. Offer
2. Acceptance
3. Consideration
4. Intention to create legal relations





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**Case examples:**

1. Volunteer agreement was a binding contract
2. Expectations are not obligations
3. Required standards did not create mutuality of obligation


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**Volunteer agreements**

What is it?

Do I need one?

Are there alternatives?




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**Tips to reduce risk of creating legally binding contract with volunteers**

DOs DON'Ts


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## Payments to volunteers



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## National Minimum Wage

- Who does it apply to?
- Volunteer vs voluntary worker
- Consequences for failure to comply?



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## DBS checks for Volunteers

- Where volunteering activity involves working with children and/or vulnerable adults, need enhanced DBS check
- Enhanced DBS certificate will contain details of: convictions; cautions; police reprimands and warnings; other relevant police information; and where appropriate, any information stored about the person on statutory lists (e.g. if barred from working with children or vulnerable adults)
- Limits- Disclosure may omit details of overseas convictions

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**Right to work checks for volunteers**

- Volunteer vs voluntary worker
- Voluntary work is considered work (and therefore subject to right to work checks) whereas volunteering is not
- Voluntary work has the same meaning as provided for in the National Minimum Wage legislation
- If a volunteer could be classed as a voluntary worker under NMW legislation, then there is a risk could be subject to right to work checks
- Therefore, there is no requirement for charities to undertake right to work checks on volunteers (provided that they are volunteers)

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**Data protection and volunteers**

- Volunteers are data subjects
- Rights of data subjects
- Privacy notice
- Data protection policy


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 **Thank you**

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