

VOLUNTEERS

Introduction

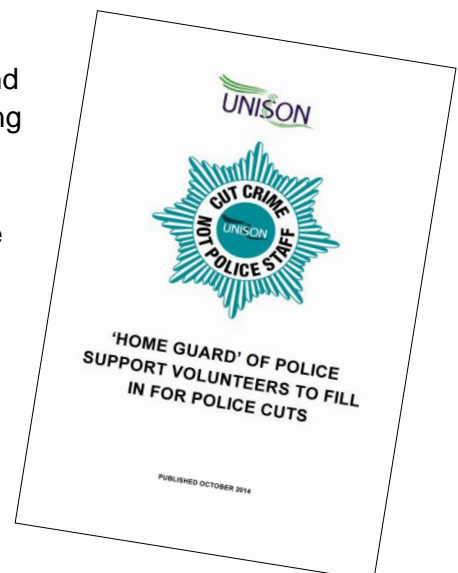
This guidance sets out the key issues for branches in discussions with employers over the use of volunteers in the delivery of services, key points in preventing replacement of contracted employees and an outline of employment rights issues that can arise in the use of volunteers.

Background

It is estimated that 22 million people in the UK act as volunteers in some form every year and giving time freely in support of public services is an established tradition in many workplaces. As an uncontroversial practice, this can be seen in a wide variety of valuable roles, from a classroom helper to a hospital fundraiser.

However, the huge budget cuts imposed on public services over recent years have encouraged some employers to push volunteering well beyond its accepted boundaries and seek cost reductions by expanding the role of volunteers to core positions in the delivery of services. The examples below illustrate the growth of volunteering across many sectors where UNISON has been active in opposing any attempt to displace contracted staff.

- It is now estimated that there are 9,000 police support volunteers working in the police service across England and Wales. In some cases these volunteers are fulfilling core police roles such as crime scene investigators, driver training, operational planning and custody investigation staff. UNISON played a critical role in the College of Policing coming out against the development of a new “volunteer police community support officer” role. [For UNISON’s full report click [here](#)]
- Within the public libraries of the UK, the number of volunteers has increased by 22% since 2010, bringing the total number of volunteers to 21,462. At the same time, the number of paid staff has fallen by over 4%.
- Examples have appeared of volunteering in the NHS which expand roles into direct patient care. In January 2015, UNISON voiced deep concern at recruitment of volunteers by NHS Greater Glasgow and Clyde into the A&E Department of Paisley Hospital.



These trends have been given added weight by ever greater levels of contracting out services , which can act as a back-door way of introducing the large scale use of volunteers to deliver services previously conducted by paid staff.

Establishing an agreement

In workplaces where volunteers are utilised or there is a reason to believe that they are to be introduced, it may be valuable to initiate early discussions with the employer to establish an agreement over the terms on which volunteers are deployed.

The ten-point [best practice charter](#) published jointly in 2009 by the TUC and Volunteering England (which has since merged with the National Council for Voluntary Organisations and acts as the principal voice on volunteering in England) can act as a useful and authoritative reference point for such discussions.

TUC and Volunteering England:

Charter for Strengthening Relations Between Paid Staff and Volunteers

- All volunteering is undertaken by choice, and all individuals should have the right to volunteer, or indeed not to volunteer;
- While volunteers should not normally receive or expect financial rewards for their activities, they should receive reasonable out-of-pocket expenses;
- The involvement of volunteers should complement and supplement the work of paid staff, and should not be used to displace paid staff or undercut their pay and conditions of service;
- The added value of volunteers should be highlighted as part of commissioning or grantmaking process but their involvement should not be used to reduce contract costs;
- Effective structures should be put in place to support and develop volunteers and the activities they undertake, and these should be fully considered and costed when services are planned and developed;
- Volunteers and paid staff should be provided with opportunities to contribute to the development of volunteering policies and procedures;
- Volunteers, like paid staff, should be able to carry out their duties in safe, secure and healthy environments that are free from harassment, intimidation, bullying, violence and discrimination;
- All paid workers and volunteers should have access to appropriate training and development;
- There should be recognised machinery for the resolution of any problems between organisations and volunteers or between paid staff and volunteers;
- In the interests of harmonious relations between volunteers and paid staff, volunteers should not be used to undertake the work of paid staff during industrial disputes.

The same [charter](#) has been adopted by Volunteer Development Scotland and the Scottish TUC, while Wales Council for Voluntary Action agreed a similar [charter](#) with the Wales TUC, though it includes some additional points, most notably concerning contracting out.

The key issue for UNISON in any agreement is that it should include the following points to protect paid staff and ensure good relations with volunteers:

- Volunteers will only be utilised to undertake work that forms a supplement to activity usually conducted by paid staff and complements the core work in delivering services;
- Volunteers shall not be utilised to cover the work of paid staff during sickness absence or to undertake the duties of paid staff during industrial action;
- A clear policy and process for the resolution of disputes between paid staff and volunteers shall be established;
- A clear listing of volunteer roles and their responsibilities will be established in consultation with trade union reps and any proposed new volunteer roles will only be introduced after discussion and negotiation with trade unions reps;
- Paid staff will not be encouraged to engage in volunteer activities as a form of unpaid overtime.
- During any contracting out process, bidders will be required to quantify any intended use of volunteers and the selection process will take account of the bidder's position on whether they intend to utilise volunteers for roles currently delivered by paid staff.

Defending paid staff

Though any agreement may seek clarity over the roles fulfilled by volunteers, inevitably there can be some grey lines which encourage the employer to push for increased use of volunteers. In advancing the case for paid staff over volunteers, the following points may be worth emphasising to the employer.

- Volunteers are not a cost free option. Utilising volunteers to deliver services demands investment in recruitment, supervision and training, in addition to the costs faced in some sectors due to compliance with vetting and barring / health and safety legislation.
- Paid staff provide much greater certainty over staffing levels to be able to meet the demands on a service.
- Paid staff provide much greater certainty over standards of service as the employer can exercise greater control over staff capability and training, as well as requirements placed on staff.
- Paid staff provide much greater consistency and continuity in delivering services as turnover is substantially lower than among volunteers, leading to a reduced burden of time and cost on the employer in continually retraining.
- As a result of all these factors, paid staff provide a much more assured basis for delivering high quality services.

- Other options, including the use of flexible working arrangements or employment of part-time / fixed term employees, can enable allow services to be delivered at a lower cost without compromising service quality to the same degree.

Where employers display a determination to press ahead with taking on volunteers despite staff opposition, the Equality Act and the Public Sector Equality Duty can offer a useful means to challenge proposals. The duty places a requirement on public authorities to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- Advance equality of opportunity between people who share a protected characteristic and those who do not;
- Foster good relations between people who share a protected characteristic and those who do not.

The way this requirement has been utilised to challenge wholesale replacement of paid staff by volunteers is shown by the case below.

In 2012, the High Court ruled that a decision by Surrey County Council to run 10 libraries entirely through volunteer staff was unlawful. The decision was challenged on the basis that the council had failed to discharge its public sector equality duties under the Equality Act 2010 to consider the impact of removing paid staff would have on the accessibility of libraries to protected groups, including children, elderly and disabled people. The judge ruled that the decision-making process had been flawed as training for volunteers was not fully discussed by the council.

Rights of volunteers

As members of the public who give their time freely to a task without financial recompense, volunteers do not have a contract of employment and therefore they do not have the rights to which employees or workers are entitled. Most notably, a volunteer:

- Has no right to the national minimum wage, holiday pay, sick pay or protection from unfair dismissal;
- Is not covered by the Working Time Regulations and therefore they is not protected by the 48 hour week limit or any minimum holiday entitlement;
- Stands outside the protection against discrimination provided by the Equality Act.

However, volunteers do have some basic legal protections provided by the following legislation:

- Employers must comply with the Data Protection Act's rules on processing of personal data for volunteers;
- The Health and Safety Act 1974 places a duty of care on employers "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 affect their health or safety;"

- Volunteers are also subject to Criminal Record Bureau checks if they are to work with children or vulnerable adults and need to register with the Independent Safeguarding Authority (though no application fee is charged for volunteers).

[For a comprehensive outline of volunteers' employment rights see [Volunteers and the Law](#)]

Volunteer agreements

Given the lack of employment rights available to volunteers, branches should push employers toward establishing volunteer agreements to ensure that a volunteer is treated fairly and consistently, but also because such agreements can set out a clear demarcation between their role and staff who have a contract of employment.

Volunteer agreements should set out details about management of volunteers, processes for dealing with problems, mutual expectations, methods of recruitment and selection, support and supervision, equal opportunities and diversity, health and safety, liability insurance and confidentiality requirements.

An example of a generic agreement produced by Volunteering England can be found [here](#)

An example of an actual agreement from the National Library of Wales can be found [here](#)

Employment rights of volunteers

Though genuine volunteers are not entitled to employment rights, it can be easy for the terms of arrangements with volunteers to reclassify them in the eyes of the law as employees or workers.

Volunteers are normally excluded from employment rights because a contract requires payment in return for work. However, minor expenses, training or promise of future work can be sufficient to constitute the "payment" necessary to form a contract.

Volunteers can only receive expenses on an "out of pocket" basis to cover such costs as travel or subsistence incurred in the cost of volunteering activity.

Any form of fixed expense payment can be seen as contributing toward a contractual relationship and can also have consequences for the volunteer in their tax liability and entitlement to benefit payments.

Government guidance on volunteer rights provides the examples below of how "payment" arrangements can inadvertently lead to employment rights, such as entitlement to the national minimum wage.

Example 1 - Ellie volunteers at a company to get some work experience. She's given travel expenses even though she walks to work. This is payment, rather than out-of-pocket expenses, so she must be paid at least the minimum wage.

Example 2 - Dave volunteers for an organisation tending local parks. All volunteers get £3 a week for travel but Dave is responsible for a park close to his home, so he walks there. This means the £3 is a payment and not a reimbursement of expenses. It could count as a contract of employment meaning Dave could be eligible for the minimum wage.

Example 3 - Joe is an unpaid intern* at a record company, but he's given free CDs as a perk. The CDs are 'benefits in kind'. They mean he must be paid at least the minimum wage.

Example 4 - Amanda is an unpaid intern* at a design company. She's been promised that she'll be taken on as an employee after 3 months. This counts as a reward, so she must be paid at least the minimum wage for the whole time she spends at the company.

* An unpaid intern is a student or trainee who works as a volunteer in order to gain work experience or satisfy requirements for a qualification.

A government guidance note on the minimum wage and interns / volunteers is available [here](#)

Recruitment and organising

UNISON does not accept volunteers as members. However, given that it is not unusual for volunteers to engage in voluntary work as a stepping stone toward paid employment, developing positive relations with volunteers can pay dividends in membership recruitment at a later stage. In addition, it is worth remembering that many volunteers also have paid work elsewhere which may qualify them for UNISON membership.

Dialogue with volunteers at induction events, developing a volunteer agreement and advising on employment issues can all contribute toward creating a strong impression of the union that pays off in the long term.