



Helping with COVID-19: What responsibilities does my organisation have towards volunteers?

Overview

Even if you have set up a relatively informal organisation, run by volunteers and not employees, the organisation will still owe its volunteers a duty of care and certain responsibilities.

Volunteers have fewer rights and less legal protection than paid staff, but there are several areas that you will need to consider when establishing volunteer organisations to help with the COVID-19 crisis.

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1. Equality Act Responsibilities

The *Equality Act 2010* provides people with legal protection from discrimination in both the workplace and in wider society. It sets out the different ways in which it's unlawful to treat someone.

Although volunteers are not employees, the organisation has asked them to act on its behalf and therefore may be responsible for their volunteers' discriminatory actions under the *Equality Act 2010*.

Organisations must show that they have taken reasonable steps to make sure that volunteers know about equality issues and do not discriminate towards service users (i.e. the people using the services that the volunteer organisation provides).

Tips for making sure volunteers know about equality issues:

- Discuss or make volunteers aware of equality issues. Make sure they understand the organisation's commitments and responsibilities, and will meet these.
- Have clearly defined volunteer role descriptions that set out the boundaries of volunteers' roles and responsibilities.
- Make sure there is enough supervision, communication and monitoring to keep an eye on day-to-day behaviour, and take action if issues arise.
- Give each volunteer a named supervisor. The volunteer can go to their supervisor with any questions or concerns, and the supervisor can help to ensure that volunteers do not work beyond their role or training.
- Make sure service users and volunteers have clear ways to raise complaints or concerns, so that mistakes can be swiftly put right.

2. Health and Safety

Most health and safety legislation only applies to paid workers, but volunteers must still be protected from risks. Organisations have a duty of care towards their volunteers, and an obligation to protect them under section 3 of the *Health and Safety at Work etc. Act 1974*. It is also recommended to prepare risk assessments and to have a health and safety policy in place.

Duty of care

The duty of care is a common law duty to take reasonable care to avoid harming others. The organisation (and, depending on the structure of the organisation, its trustees) could be liable if a volunteer is injured because the duty of care was not met. This means that reasonable steps should be taken to reduce the likelihood and potential seriousness of injury to volunteers, for example:

- giving volunteers the right information;
- providing training to all volunteers;
- making sure safety clothing or equipment is available to volunteers and that they use it; and
- supervising volunteers closely.

Health and safety legislation

The *Health and Safety at Work etc. Act 1974* states that employers must look after the health and safety of anyone who could be affected by their work, which includes volunteers. They must also provide any relevant information on health and safety.

The *Management of Health and Safety at Work Regulations 1999* say employers must do risk assessments that look at potential risks to their employees and others

who may be affected by their activities, which includes volunteers. If they have five or more employees, these assessments must be written.

Organisations without any paid staff are not required to do risk assessments. However, it makes sense for all organisations to do a written risk assessment to show that the duty of care is being taken seriously.

Risk assessment

A risk assessment involves looking at hazards and risk. 'Hazard' means anything that could cause harm. 'Risk' is a combination of the likelihood of that happening and the potential seriousness if it did. It is advisable for organisations working with volunteers to have an overall risk assessment for the volunteer programme and smaller risk assessments for individual roles. Other risk assessments should also think about volunteers.

The legislation does not say how the risk assessment should be done. However, the Health and Safety Executive recommends this five-step approach:

1. Look for the hazards.
2. Decide who might be harmed and how.
3. For each hazard, work out the chance of harm being done and decide whether the precautions are good enough.
4. Record what the risk assessment finds, such as the main risks and what you have done to deal with them.
5. Check your assessment regularly and change it if needed.

The action that needs to be taken will depend on the type of hazard. Examples of actions include:

- providing information or training;
- changing how the programme is carried out;
- providing more supervision;
- changing how things are done;
- providing protective clothing or equipment; or
- avoiding an activity if it has been found to be too hazardous.

The aim of the risk assessment is to be able to show that potential problems were identified and that something has been done to lower risk.

Health and safety policy

The *Health and Safety at Work etc. Act 1974* says organisations with five or more employees must have a written health and safety policy. However, organisations with fewer than five paid members of staff should also think about writing a health and

safety policy and giving it to staff and volunteers to show that their duty of care is taken seriously. Volunteers should be included in the policy. They should have a copy or be able to read it.

When new volunteers join your organisation, they should have an induction session to explain how the organisation works and their role in it. Inductions should also cover health and safety, and explain the health and safety policy and what it includes.

Your organisation's health and safety policy should include the following elements:

- A 'statement of intent': this should explain the aims and ethos of the organisation about the safety of its paid staff, volunteers and anyone else who may come into contact with it.
- Who is responsible: this should explain who volunteers and other staff should go to report an incident or seek help or advice.
- The arrangements in place: the policy should set out the systems and procedures that should be followed in different health and safety scenarios. These do not need to be described in detail, but if they are not contained in the policy they must be detailed elsewhere (for example, a volunteer handbook etc.). This section might include information about procedures for first aid, reporting and investigating accidents, fire procedures etc. Organisations such as the Health and Safety Executive can give information on writing a health and safety policy.

Liability

Breaking health and safety law is a criminal offence. The *Health and Safety at Work etc. Act 1974* says that if someone has committed an offence under health and safety law that was due to the actions of someone else, or their failure to meet a legal responsibility, this other person can be charged with the offence (whether or not the first person is charged). This could include committee members and senior managers, as well as the individuals directly involved.

Who is liable for negligence (causing loss, damage or injury because the duty of care hasn't been met) depends on the structure of the organisation. In unincorporated associations and trusts, the members of the governing committee may be personally liable. In incorporated organisations (e.g. those limited by guarantee), the organisation will usually be liable and not the individual governing body members. Trustees can be protected against such costs by their organisation.

Incorporated charities (e.g. a company limited by guarantee or a charitable incorporated organisation ("CIO")) are subject to the *Corporate Manslaughter and Corporate Homicide Act 2007*. This means that the organisation can be found guilty of corporate manslaughter or homicide. This can happen if senior management's

failures contributed to negligence or a serious breach of the duty of care in an activity that led to a death. [The Crown Prosecution Service offers a clear guide to the implications of the Act.](#)

The Health and Safety Executive has produced guidance for directors and members of governing bodies, [Leading Health and Safety at Work.](#)

It should also be borne in mind that an organisation is likely to be held liable for any actions or omissions by its volunteers who impact on the health and safety of others. Although the *Compensation Act 2006 and Social Action, Responsibility and Heroism Act 2015* encourage courts to consider the importance of not putting people of participating 'desirable activities' like volunteering, but does not remove the duty of care towards volunteers (or others) or the duties under section 3 of the *Health and Safety at Work Act*.

3. Safeguarding

Safeguarding is the preventive and precautionary approach to planning and procedures needed to protect individuals from any potential harm and deal with issues when they arise. The *Safeguarding Vulnerable Groups Act 2006*, which applies to volunteer organisations, was introduced to help avoid harm, or the risk of harm, by preventing people who are deemed unsuitable to work with children and vulnerable adults from gaining access to them through their work.

Safeguarding is about taking steps to protect everyone from harm, abuse or neglect. This includes the beneficiaries and clients you work with, staff, contractors and volunteers. Organisations working with children or vulnerable adults need to think about how to protect beneficiaries, service users and volunteers. If volunteers are working with vulnerable service users, organisations have a legal duty to make sure that the volunteer is suitable for that role which means it should 'act reasonably' when making that decision and conduct appropriate recruitment and vetting procedures. Depending on what activities the volunteer will be doing, the organisation should also consider if it needs to carry out a criminal record check.

Volunteers should not feel unprepared or unsupported, so you will need to consider:

- organisational safeguarding measures and safe recruitment practices, which may include obtaining disclosures for volunteers working with vulnerable clients if they are eligible for one;
- risk assessments of volunteer roles to determine whether the role is eligible for a Disclosure and Barring Service (“**DBS**”) check;
- having a child protection and/or safeguarding policies in place, which can be supported by other relevant policies such as a Recruitment Policy;
- having regard to relevant statutory advice and guidance; and

- asking for advice from other organisations in your field, or advisory bodies and the crime reduction charity Nacro. Your local authority may also be able to provide advice and guidance.

If an organisation with staff or volunteers in regulated activities dismisses an individual (which could include a volunteer) because they harm someone or dismisses them or changes their role because they might have harmed someone, or if the individual resigns before a dismissal takes place, the organisation must report them for inclusion on lists of people barred from working with children or vulnerable adults.

4. Volunteer Driving Requirements

Insurance

Drivers using their own vehicles in their voluntary activities should tell their insurers, although those volunteering to help their communities during the coronavirus outbreak do not need to contact their insurer to update their documents or extend their cover, the [Association of British Insurers](#) have said.

Organisations should make sure that volunteers have told their insurers about their volunteer driving. A simple way to do this is to give volunteers a standard letter with a return slip for the insurance company to complete.

Expenses

It is good practice for drivers' expenses to be paid back, but organisations should be careful not to give amounts that could be seen as going beyond a reimbursement of actual expenses. HMRC sets limits on how much mileage allowance can be paid back tax-free for travel costs, so that people don't make a profit from these payments. These are upper limits on how much can be reimbursed tax free, not recommended rates for organisations to pay. More information is available on the [gov.uk website](#).

MOT and vehicle condition

The organisation should ask to see an MOT test certificate if the vehicle is over three years old. The organisation should be reasonably confident that the vehicle is safe. This can be checked by looking to see if the vehicle has any obvious problems and asking the volunteer what maintenance is carried out. There are also legal requirements for wearing seat belts. It is important to remember that:

- cars must have front and rear seatbelts and all passengers should wear seatbelts;
- passengers aged over 14 are legally responsible for making sure that they are wearing a seat belt; and

- drivers are responsible for making sure that children under 14 years old are using an appropriate child or booster seat.

The Driver

By law, a driver must notify the Driver and Vehicle Licensing Agency (DVLA) if:

- they have from a medical condition or disability that may affect their driving
- they develop a condition or disability
- an existing condition or disability that may affect their ability to drive develops.

The DVLA will then make a decision about the person's fitness to drive. Not telling the DVLA about a condition or disability is a criminal offence. The driver could also invalidate their insurance if they do not follow medical advice not to drive.

Drivers should be trained if they are carrying elderly or disabled people or children, particularly in picking up and setting down passengers; or in disability awareness and customer care.

Drivers should rest for at least 15 minutes every two hours within a journey, and between journeys.

It is a good idea for organisations to consider providing ID for volunteer drivers so that the people they are picking up can clearly recognise them. The identification should include the main telephone number for the voluntary driving scheme.

Drivers should not drink alcohol for at least 12 hours before a journey. This is an issue that you can tackle in training and you may want to have a clear policy on it.

5. Data Protection and Volunteers

Organisations need to keep details about their volunteers (unless they are volunteering as an informal, one-off activity). If these details are included in the *Data Protection Act 1998*'s definition of 'personal data', the organisation must follow the rules about how it collects, stores, uses and discloses this information. It may need to register with the Information Commissioner. There is a [self-assessment tool](#) for organisations to check whether they need to register on the Information Commissioner's Office website.

The *Data Protection Act 1998* has eight data protection principles, which give guidance on what organisations should do. It is imperative that organisations train their volunteers if they are to handle personal data. This can include personal information of service users, other volunteers, staff and trustees. Volunteers should receive as part of their induction the eight principles of data protection so they can be clear about their responsibilities in complying with legislation.

Volunteer records

There are no clear guidelines about how long volunteer records should be kept. Organisations should follow the data protection principle that data should not be kept longer than for the purpose which it was taken. For example, contact details of people who have enquired about volunteering but have not wished to progress to becoming volunteers should not be held. Otherwise there are certain sets out information that need to be kept for a prescribed amount of time:

- The DBS Code of Practice says that disclosures must not be kept for longer than six months, except in exceptional circumstances. In its general guidance it recommends that organisations speak to the DBS if they think they may need to keep disclosures for longer.
- Records about accidents should be kept for at least three years – the time limit for personal injury claims under the *Limitation Act 1980*. There can be exceptions to this if long-term health effects may emerge, as with asbestosis. The three-year limit then starts when the individual is first aware of the problem.
- Organisations that have volunteers who give advice or similar services should be aware that the *Limitation Act 1980* says there is a six-year time limit for damages claims that are not about personal injury. A case like this might require training records and similar information to show that the organisation took the right steps to avoid damage.

6. Insurance

It is important that volunteers are adequately insured. Organisations are likely to have cover but it is important to check that the policies cover volunteers. Insurance cover does not mean that health and safety responsibilities can be neglected.

Organisations should make sure volunteers have accurate and up-to-date information about insurance so that they understand what activities are covered whilst they are volunteering. It can be useful to make sure that volunteers know that all insurance policies are limited, and that insurance policies can change over time, so they should always check if they are unsure if an activity is covered.

All groups and organisations that involve volunteers should think about what types of insurance they need.

- Employers' liability insurance: employers in Great Britain have a duty under the *Employers' Liability (Compulsory Insurance) Act 1969* and *Employers' Liability (Compulsory Insurance Regulations) 1998* to have employers' liability insurance for no less than £5m. This insurance must cover liability for accidents, disease or injury to an employee due to negligence or breach of health and safety law by the employer. Employees, workers, apprentices and

some trainees must be insured under this cover, but there is no duty to insure volunteers, but it is advisable to do this, in case negligence cases are brought by volunteers.

- Public liability insurance: This insurance cover is not a legal requirement, but any organisation that owns or controls premises, holds public events or works with the public should have it. In general, public liability insurance protects the organisation for claims by third parties, including service users and members of the public, for death, illness, loss, injury, or accident caused by the negligence of the organisation. It can be extended to protect the organisation against claims from volunteers arising from injury or sickness as a result of negligence by the organisation. It can also protect for loss or damage to property caused through the negligence of someone acting for the organisation, which may include volunteers.
- Personal accident insurance: covers injuries, accidents or deaths that happen if the organisation has not been negligent. Some organisations may want to provide this cover or extend an existing policy as a courtesy towards volunteers.
- Professional indemnity insurance: organisations providing information, advice or other professional services should have professional indemnity insurance and make sure that volunteers involved in these activities are covered. This type of insurance covers organisations for claims arising from injury, loss or damage resulting from advice or other services.