

# IHPBD: LawWorks Online Training UK Employment law

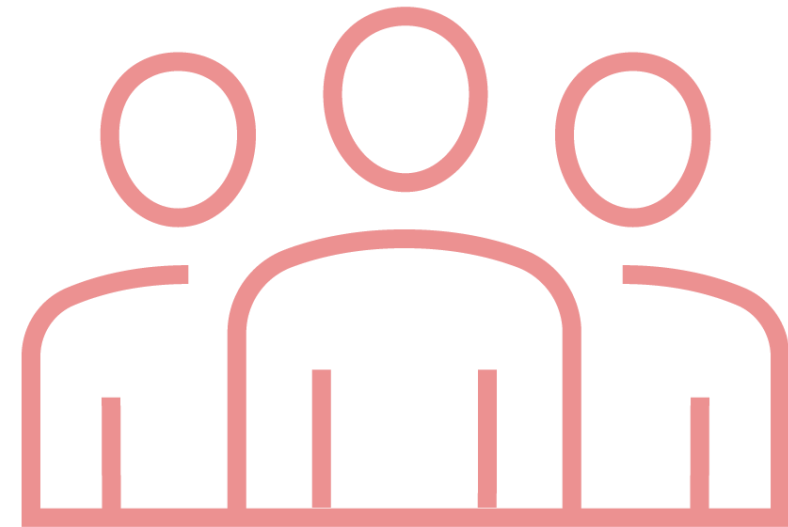
Developed by Pro Bono Volunteers for LawWorks

April 2024



# Employees and volunteers

- What are the employment statuses in the UK?
- What are volunteers?
- What should be in a volunteer agreement?
- How to manage your volunteers
- Dealing with issues arising with your volunteers
- Dealing with employees



# Employee, Worker or Self-employed?

- Three main types of employment status: Employee; Worker; or Self-employed.
- Employment status determines legal rights and obligations.

## Employee

- An individual engaged under a contract of employment, who is entitled to all statutory employment rights (greatest level of protection).

## Worker

- An individual engaged under a contract for services or a zero-hours contract, who is entitled to the core statutory employment rights.

## Self-employed

- An individual who carries out work for their own business and is not entitled to any statutory employment rights.

# Employment Rights

Right	Employee	Worker	Self-employed
Written statement of terms	✓	✓	X
National Minimum Wage	✓	✓	X
Working Time limits	✓	✓	X
Paid holiday	✓	✓	X
Statutory sick pay	✓	✓	X
Right to request flexible working	✓	X	X
Time off for emergencies	✓	X	X
Minimum notice periods	✓	X	X
Protection from unfair dismissal	✓	X	X
Statutory Redundancy Pay	✓	X	X
Protection for whistleblowing	✓	✓	X
Discrimination protection	✓	✓	✓

# Factors to determine employment status

## The contract

- What was the intention of the parties?

## Level of control

- Who decides what work to do and how it is to be done?

## Mutuality of obligations

- Is the employer required to provide work and must the individual accept it?

## Integration into the organisation

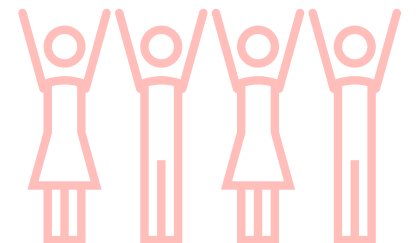
- Is the individual part of the organisation?

## Economic reality

- Who bears the financial risk?

# Volunteers

- No statutory definition of “volunteer”
- A volunteer is an individual who works for an organisation on a voluntary basis without being paid
- A volunteer is not considered as an employee or worker (but there is a risk that they may acquire such status)
- There is no obligation on the employer to offer work, or on the volunteer to perform the work
- No entitlement to National Minimum Wage but a volunteer may be reimbursed for reasonable expenses



# Volunteer Agreements – should you have one and what should they include?

- Good way to confirm the intended arrangement / volunteer status
- Refer to it as an “agreement” rather than a “contract”
- Avoid using language which suggests that a volunteer is required to perform any work
- Refer to “expectations” rather than “obligations” in terms of duties, time commitments and behaviour
- Make it clear that there are no strict sanctions if the volunteer does not meet those expectations
- Set out the procedure for claiming and paying expenses
- List any training that will be provided
- Set out your obligations towards volunteers e.g. health and safety



# Tips to maintaining the correct status

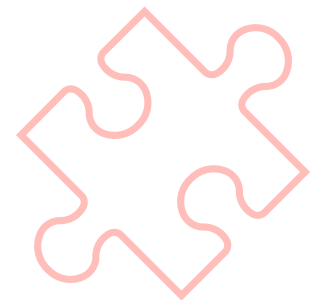
- Be clear on the difference between your volunteers and your employees
- Work should be undertaken freely and by choice
- Any benefits should be limited to one-off gifts, and/or reimbursement for reasonable expenses – avoid regular payments
- Be as flexible as possible in your arrangements with volunteers
- Do not impose sanctions on volunteers i.e. volunteers should not be penalised for declining work
- Make sure the language in any agreement does not sound contractual





# Case study 1

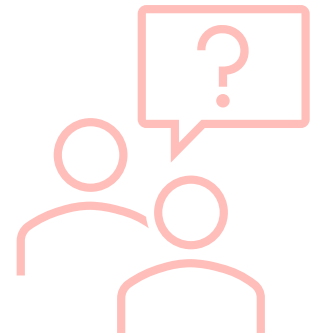
Caroline works four days per week, from 10am to 1pm each day, and receives £40 per week in respect of her expenses although this does not relate to actual expenses incurred. Caroline is paid even when she is on sick leave or on holiday.



# Case study 1

Do you think Caroline is a volunteer?

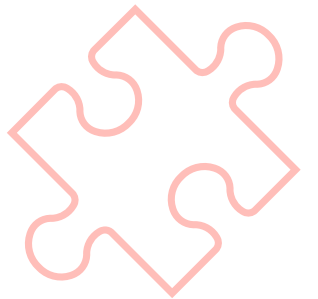
1. Yes
2. Possibly
3. No



## Case study 2

Anne volunteers as a counsellor for a well-known charity. The charity required Anne to enter into a contract under which the charity will provide training and she is expected to provide 60 hours of unpaid counselling a month. There is also the possibility of paid counselling work after volunteers have completed a certain number of hours.

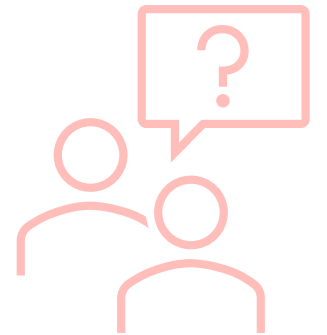
If Anne was required to repay part of the costs of her training if she failed to meet the 60 hour monthly target, would your answer be different?



# Case study 2

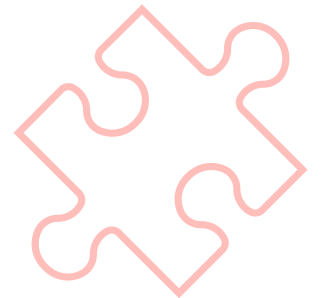
Do you think Anne is a volunteer?

1. Yes
2. Possibly
3. No



## Case study 3

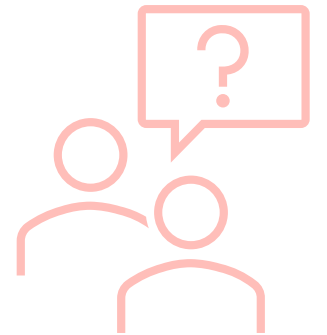
John applies for a post as a voluntary advisor at his local Citizens Advice Bureau. If successful, a volunteer advisor is required to sign an agreement. Advisors are required to commit to a certain number of hours each week. They are also required to notify their manager of absences and give reasonable notice if they wish to leave. There is also a procedure for booking holidays. In return, advisors receive formal and informal training and support and reimbursement for travel expenses. The agreement also sets out disciplinary and grievance procedures.



# Case study 3

Do you think John is a volunteer?

1. Yes
2. Possibly
3. No



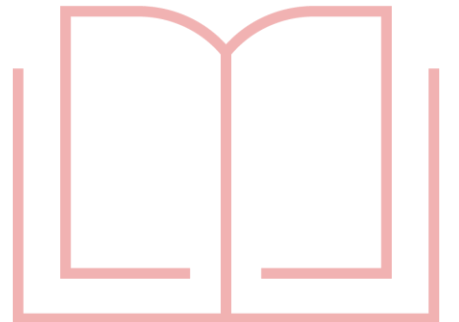
# Rights of a volunteer

- The right to protection from harassment
- Rights relating to discrimination
- The right to protection of health and safety laws
- The common law duty of care and personal injury law – consider what insurance to have in place. Employer liability insurance – not strictly required under the employment legislation but good practice
- Personal data must be handled in accordance with Data Protection law



# Managing volunteers

- Recruiting volunteers
  - Fair recruitment process
  - Carrying out necessary checks (DBS/other?)
- Ensure volunteers feel valued by the organisation
- Establish a volunteering strategy
- Ensure volunteers understand equality, diversity and inclusion – although not covered to the extent of employees but still required
- Support your volunteers





# Resolving problems with volunteers

- Encourage feedback and speak up
- Whistleblowing
- Liability for dealing with discrimination
- Bribery and corruption



# Resolving problems with volunteers (cont.)

- Process for dealing with any issues
  - Separate to grievance and disciplinary process for employees
- What steps can be taken short of dismissal
  - Further training re role and expectations
  - Changing the tasks within their role within organisation
  - Moving to another role
- Dismissing volunteers
  - Treat fairly
  - No discrimination in the process



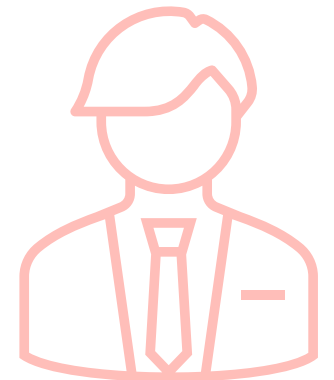
# Managing employees

- Recruitment – DBS and Right to work checks
- Employment contracts and written statement of particulars
  - Requirement to give written statement
  - Statutory minimum requirements will apply e.g. National Minimum Wage, hours of work and holidays, family friendly rights, statutory sick pay, statutory minimum notice, discrimination, pensions
- Dealing with issues with employees
  - Disciplinary and grievance procedure
  - Follow a fair process



# Managing employees (cont.)

- Dismissing an employee – reason for termination
  - Redundancy
  - Poor performance/capability
  - Misconduct
- Dismissing an employee – fair process
  - Selection and consultation on redundancy
  - Fair process for performance/misconduct



# Employees – Disputes with employees

- Employment rights on termination
  - Unfair dismissal
  - Contractual rights
  - Discrimination claims
- Avoiding claims
  - Fair reason and a fair procedure
- Settling claims
  - Acas
  - Settlement Agreement – issues re Charity status

