

# Volunteers and the law

NAVSM Conference

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# Overview

- The overall legal position of volunteers
- Keeping people safe
  - Criminal record checking
  - Health and Safety
- Data Protection changes
- Visas
- Benefits

# The legal position of volunteers

- Volunteers don't have employment protections
- Some law does include volunteers
  - Explicitly: Screening, visa rules
  - Implicitly: Data protection, Duty of care
- Some volunteers have successfully argued that they were in fact employed.

# Avoiding employment relationships

- Contracts of employment can arise with volunteers
- A contract is a relationship not a document
- Use the language of expectations
- Expenses and perks

# Expressing the relationship

- Volunteer agreements are helpful – they set out mutual expectations
- ‘Expectations’ is the language to use
- It’s worth saying that the agreement is not intended to set out a binding relationship
- Can be signed or unsigned.

# Health and Safety

- Duty of Care
- Section 3 of the Health and Safety at Work Act 1974
  - Employers must take account of the safety of anyone who may be affected by their work

# Safeguarding

- Duty of Care
- The Health and Social Care Act (2008) and the Care Act (2014)
- Disclosure and Barring Service
  - There is no difference between volunteers and paid workers for the purposes of the DBS, other than for their fees.

# Homeless people and the DBS

- Lack of ID
  - Fingerprinting at a police station
- Lack of previous addresses
  - See the ‘DBS unusual addresses guide’
  - ‘No fixed abode’ as address, with the town/city, and dates.
- Remember a criminal record is likely, and consider the circumstances



# Data Protection

## General Data Protection Regulation:

- Strengthening of data protection responsibilities and the rights of 'data subjects'
- Consent must be 'freely given, specific, informed and unambiguous'
- Rights of individuals, including:
  - 'right to be forgotten'
  - 'right of access'

# Data Protection

- The ‘right to be informed’
  - Concise, transparent, intelligible and easily accessible – and in plain English
  - Retention periods
  - Right to withdraw consent
  - Purpose of processing
  - Details of data controller/data protection officer

# Benefits

All benefits allow the claimant to volunteer

- Jobseekers Allowance - actively seeking, available for work
  - 48hrs notice for job interview, one week's to start work
- Universal Credit/all work-related requirements
  - Up to half of work related activity can be volunteering

# Volunteers from overseas

- No restrictions for people from EU/European Economic Activity countries (for now...)
- From outside:
  - Holders of a visitor visa can now volunteer for up to 30 days for a registered charity
  - Other people must have a visa status that allows them to work – students, working holiday, Tier 2 (General) or (Intra-company) visas

# Asylum Seekers

- No restrictions on people with refugee status volunteering, but take care that asylum seekers are not seen to receive income.
- Asylum seekers are now allowed to volunteer in the public sector
- Criminal record checking can be an issue –
  - lack of ID may mean fingerprinting is needed.
  - No information from their home country

# Further information

- NCVO
- Volunteers and the Law (second edition)
  - Forthcoming
- [www.sandy-a.co.uk](http://www.sandy-a.co.uk) (Sandy Adirondack)

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