



## **Risk control**

### Volunteers – Risk Management Guidance



In partnership with



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## Introduction

Official statistics (NCVO.org.uk) confirm a growing trend over the last two decades in the number of people volunteering their services. The types of activities in which volunteers become involved covers a wide range of activities including:

- Sports, leisure and recreation
- Education and youth work
- Health and social care
- Environmental protection and upkeep
- Local community services
- Festivals and events

In some cases local authorities recruit volunteers directly, and in others they work with charitable organisations that make use of volunteers to deliver services.

This guidance note is provided to review some of the main risk management considerations when using volunteers and in particular with regards responsibility for:

- Health and safety – The law and managing the risk
- Safeguarding vulnerable groups
- Insurance requirements

For the purposes of this guide we are adopting the following definition of volunteering:

Any activity that involves spending time, unpaid, doing something that aims to benefit the environment or someone (individuals or groups) other than, or in addition to close relatives.

## Health and Safety

### The Law

The HSE is keen to acknowledge the valuable contribution that volunteers make to society and to emphasise that health and safety law is not a barrier to volunteering activities.

Volunteers are not employees and so generally health and safety legislation, that sets out the duty of employers to protect their employees and also the duties placed on employees to protect themselves and others, does not apply.

However the Health and Safety at Work Act (HSW Act) also requires employers to protect other people, including members of the public, volunteers and customers etc, from risks to health and safety arising out of their work activities.

These duties most definitely apply when volunteers are used and failure to comply can result the authority being prosecuted. It is not possible to sue for damages under the

HSW Act itself although a breach of health and safety regulations may be cited as part of a civil claim for compensation based on a breach of statutory duty.

The common law also applies and means that voluntary organisations and individual volunteers have a duty of care to each other and to others that may be affected by their activities.

Occupiers' liability will be relevant in circumstances where the activity involves the use of premises. In this situation the occupier must take reasonable care to ensure the health and safety of all visitors and this will include people volunteering their services.

### Managing the risk

Risk assessment is the key. This will help to identify if the activities in which volunteers are to be engaged are low or high risk. Obviously the higher risk activities will require more preventative and protective measures to be in place.

**Generally a volunteer should be afforded the same level of information, training, supervision and protection as a paid employee engaged in the same or similar activities.**

The challenge for the risk and insurance manager is to ensure that service managers within the authority understand that a duty of care is owed to volunteers. That they conduct adequate risk assessments of the work activities in which the volunteer will be employed and they also implement and monitor the risk control measures identified as required by the risk assessment. [See the good practice checklist for more information]

As an example of hazardous activities and the need for a risk assessment; in June 2019, a national news story broke reporting that a UK Police Force had advertised for a Digital Forensic Team Volunteer, which resulted in widespread criticism of the force. Given the wording of part of the job advert, it is easy to see why this raised concerns with indications from some news outlets stating that the role involved "sifting through 'distressing [and] indecent images'", yet the advert actually stated that they would 'routinely come across' such imagery. As a result, the Force had to defend itself from potentially serious reputation damage with a variety of stakeholders looking for assurances that the Volunteer would not be exposed to something which may cause harm. There was no allegation that a risk assessment was not in place, however, perhaps the message here is to ensure that the wording of advertisements for Volunteers is scrutinised to ensure that the perception of risk which flows from it is relevant and not heightening fear among stakeholders and the community.

## Safeguarding children and vulnerable groups

Where volunteers will be working with children or vulnerable clients / service users, care must be taken to ensure the safeguarding responsibilities of the authority are met. The following risk control measures should be in place and included within the risk assessment process:

- Suitable references should be obtained and checked
- Checks made to ensure volunteers have not been barred from work with vulnerable groups (i.e. DBS checks in England & Wales, and PVG in Scotland)
- Induction training and information provided
- On-going and update training to maintain knowledge to current standards
- Supervision by a competent person
- Process of active feedback from clients / service users
- Ready access to channels by which concerns can be raised in confidence

## Insurance requirements

### General Public Liability Insurance

The work undertaken by volunteers directly on behalf of a local authority will generally be covered by the authority's public liability insurance.

Insurers will however want to be notified of the number of volunteers employed and the type of activity in which they are engaged. In particular insurers should be notified of any plans to use volunteers in higher-risk activities, for example tasks involving the use of power tools, working at height or work with service users with known violent behaviour.

It is important that detailed records or a register is maintained by service departments of the volunteers engaged by the authority. Information to retain as a minimum should include:

- Personal details (name, address etc)
- Dates during which the volunteer worked with the authority
- Activities and tasks to which the volunteer was assigned
- Confirmation that activities have been risk assessed
- Confirmation of any required safeguarding background checks
- Information and training provided to the volunteer
- Supervision and monitoring provided

The information outlined above will be required in the case of a claim against the authority involving a volunteer and so must be readily available to the risk and insurance manager. Documentation should be retained for sufficient periods as claims may be made many years after the incident has occurred. In particular claims involving children may be delayed until that person becomes an adult, and claims for certain types of disease may take decades to manifest. Document retention policies to cover such events should already be in place within the authority. For more information visit [www.qbeeurope.com](http://www.qbeeurope.com) publications.

Generally insurers will want to have assurance that the good practice procedures set out in this guidance document have been implemented.

### Driving insurance

Where a vehicle is provided by the authority then they will also provide the insurance cover. The same standards applied to employees while driving should apply to the volunteer. This may include license requirements and checks, health standards and compliance with driver policies, for example on use of mobile phones, drugs and alcohol and smoking in vehicles.

If volunteers are required to use their own vehicle they should be advised in writing of the need to notify their own insurer. If applicable checks should be made to ensure that cover is provided for any passengers travelling in the vehicle or damage incurred in the course of the volunteering activity. Driving policies that apply to employees using their own vehicles for work should also be applied to volunteers.

### Volunteers working for charities & other organisations - Non-delegable duty of care.

In some circumstances volunteers may not be working for the authority directly, rather they may be working with a third party organisation that has been commissioned to deliver the service. This may be a charity, another public authority or a commercial organisation. In such circumstances the responsibility for the volunteers' health, safety and other liabilities that might arise from the work activity will rest primarily with the third party organisation.

However in certain circumstances an authority may owe a non-delegable duty of care in the provision of the service and where this is the case full responsibility for liabilities arising out of the service delivery cannot be delegated to another body regardless of the commissioning arrangements in place. This does not prevent an authority from contracting or outsourcing the provision of services, nor does it prevent the authority from seeking an indemnity from the service provider. It does however add a level of complexity to the transfer of risk.

In the case of *Woodland v Essex County Council* (2013), the Supreme Court identified the characteristics of statutory service provision which, if met, would mean the authority would retain the duty of care even when this is delivered by an independent outsourced provider. The characteristics encompass core statutory functions, delivered to vulnerable individuals under the care of an authority.

In practical terms this means that even when every care has been taken to commission, select and appoint competent third party service providers, and even where contract terms are included that require the contractor to indemnify the authority for liabilities arising from service failures, if the contractor is negligent and harm results the authority may still be sued.

The risk and insurance manager must therefore guard against a mistaken belief that because the function has been commissioned and outsourced the financial risk has been fully transferred. *Woodlands v Essex CC* confirms that this is not the case and to protect the authority the risk and insurance manager has a very legitimate reason to scrutinise and challenge all models of outsourced delivery to seek assurances that service providers are –

- Competent (and so have policies and procedures in place that make failure unlikely). If volunteers are widely used how do they ensure they are trained and competent to do the work?
- Adequately insured (and so able to respond to liability claims and the authority is less likely to be joined in an action – see below for further information)
- Standards of service are regularly monitored by commissioning officers and improvements effected as required.

## Checking insurance arrangements

Ensuring that those commissioned to provide a service have suitable and adequate insurance cover is an area where the risk and insurance manager can provide expert advice and assistance.

It is not sufficient to merely specify within a tender that the service provider has adequate insurance. Depending on the type of service you might expect a service provider to hold employers liability, public liability, products, motor and professional indemnity insurance. Limits of indemnity should be specified and based upon an assessment of the risks inherent in the activity and the potential scale of loss. It is also important to check that there are no relevant exclusions (for example child abuse may be excluded from some policies) and whether the policy is written on a 'claims occurrence' or 'claims made' basis.

These should be checked at the start of the arrangements and periodically throughout its tenure.

## Good Practice Checklist

The following is a good practice summary checklist against which to check the adequacy of arrangements for managing the risk of a volunteer workforce.

- A volunteer policy is in place which links to the corporate health and safety and risk management policy
- All tasks which volunteers are expected to undertake have been risk assessed and control measures implemented.
- High risk activities in which volunteers are to be engaged are notified to the insurer.
- A detailed record / register of volunteers is maintained by service departments and available to the risk and insurance manager.
- Documentation on volunteers is retained for an adequate period, in-line with document retention policies applied to employees exposed to similar hazards.
- Good volunteer selection procedures and practices are followed to ensure volunteers have the appropriate knowledge, abilities, and attitude for the roles and tasks allocated.
- All volunteers are provided with induction and job related instruction and training to ensure they are able to carry out their role competently and safely. Training should be provided to all volunteers regardless of their 'underlying' trade or profession and records of training should be maintained.
- The volunteer workforce is provided with appropriate levels of support and supervision which is proportionate to the risks presented by the tasks assigned.
- There is regular monitoring and evaluation of the volunteer programme to review the adequacy of risk control measures in place, identify any new or emerging risks and develop and implement solutions to improve risk management.
- Commissioned services that make use of volunteers should be scrutinised to ensure they are competent to deliver the service, adequately insured and standards of service delivery are regularly monitored and reviewed.

***The golden rule is that generally a volunteer should be afforded the same level of information, training, supervision and protection as a paid employee engaged in the same or similar activities.***

## Further information

For access to further RMP Resources you may find helpful in reducing your organisation's cost of risk, please access the RMP Resources or RMP Articles pages on our website. To join the debate follow us on our LinkedIn page.

## Get in touch

For more information, please contact your RMP risk control consultant or account director.

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