

# volunteers in church – some dos and don'ts

December 2013



## Stewardship Briefing Paper

This Briefing Paper and others like it are provided free of charge and help a great many churches and charities. Their development involves many hours of dedicated professional expertise both from within and outside of Stewardship. They are provided at our own cost as part of our mission to equip you.

If you find the material in this Briefing Paper to be of value, we would invite you to respond in the following ways:

- Subscribe to receive our email bulletins at our website, [www.stewardship.org.uk](http://www.stewardship.org.uk); and
- Tell others in your church or charity about our resources.

If you regard the material to have been of particular help and significance to you in your work (for example using it to inform a church or charity group/network) perhaps you would consider making a financial gift to Stewardship in appreciation (though please feel under no obligation).

## CONTACT DETAILS

Stewardship  
1 Lamb's Passage, London EC1Y 8AB  
t 020 8502 5600  
e: [enquiries@stewardship.org.uk](mailto:enquiries@stewardship.org.uk)  
w: [stewardship.org.uk](http://stewardship.org.uk)

Stewardship is the operating name of Stewardship Services (UKET) Limited, a registered charity no. 234714, and a company limited by guarantee no. 90305, registered in England

© Copyright Stewardship 2013

## COPYRIGHT

This publication is the copyright of Stewardship. We want our resources to have the maximum impact, therefore you are welcome to reproduce or otherwise distribute this material in whole or part. We simply ask two things: (1) there must be no use for commercial gain, and (2) Stewardship is clearly acknowledged with the following wording "Reproduced with permission from Stewardship. [www.stewardship.org.uk](http://www.stewardship.org.uk)". If extracts are to be used in another context, permission should be sought in advance by emailing [enquiries@stewardship.org.uk](mailto:enquiries@stewardship.org.uk) or telephoning 020 8502 5600. Thank you.

## DISCLAIMER

Whilst every care has been taken in the preparation of this material, Stewardship cannot be responsible for action taken or refrained from in reliance thereon. It is recommended that appropriate professional advice be sought in each relevant individual circumstance.

## ACKNOWLEDGEMENT

Stewardship acknowledges with grateful thanks the assistance of Anthony Collins Solicitors <http://www.anthonycollins.com/> in writing this briefing paper.

## Of course they're a volunteer, we only gift them . . .

The use of volunteers by Churches is key in making sure that the business of the Church gets carried out effectively. Engaging volunteers is however notoriously tricky; to ensure that Churches don't fall foul of the law, they need to be careful that they do not inadvertently treat their volunteers like staff and create employment rights.

In 2012, the case of a volunteer worker at a Sikh temple made the headlines when the Employment Appeal Tribunal said he was a worker entitled to the National Minimum Wage ('NMW') because he was provided with free accommodation and £50 a week in donations from worshippers. Sound familiar?

We are aware these types of situations can happen in church life. For example, volunteer 'interns' or unpaid ministers are provided with free accommodation, volunteer youth workers have gifts made to them and so on.

There are a number of fairly common misunderstandings regarding the way in which volunteers can be treated, and sadly there is no single test or definition to determine whether an individual is a volunteer or whether they are in fact a worker or employee. Increasingly, we see HMRC looking behind arrangements with 'volunteers' to ensure the minimum wage is being paid where, in their view, 'volunteers' are workers. HMRC have the power to require an organisation to go back and pay the minimum wage to people whom they consider should have received it, as well as having the power to impose financial penalties.

We have set out some common scenarios in Church life that may leave the Church vulnerable to claims where those who have been labelled as volunteers may in fact turn out not to be. Sadly, these are not 'theoretical' but some real life examples of problems which have arisen either in churches or in similar settings:

- Internships – often internships with the Church offer food, accommodation and a small income/ payment to enable the intern to survive whilst they are working with the Church. Similar to the Sikh temple case above, Churches who offer such assistance may be providing a benefit in return for that individual's time. This could create an employment relationship providing the intern with employment rights and also creating an entitlement to the NMW. This could mean all of the time spent by the volunteer would have to be paid at the current rate, which for over 21s, is £6.31 per hour. There are however NMW exemptions available for volunteers who may be regarded as 'voluntary workers' which would enable them to receive reasonable subsistence expenses and reasonable accommodation (not payment towards accommodation) but, care should however be exercised in taking such a decision as these exemptions apply for the purposes of NMW only, and such voluntary workers would then be entitled to wider employment benefits such as holiday and sick pay.

- Payment to the Organist (or a similar role) – Anthony Collins Solicitors recently acted for a Director of Music within an Anglican Church in a case where the Employment Tribunal accepted that he was an employee, due to the nature of the relationship with the Church. A minimal payment had been promised to the Director of Music in return for his services and even though the individual did not retain the payment and gifted this back to the Church, the arrangements did still show there was payment made and a legally binding contract in place. Churches need to be cautious that when putting arrangements in place, or by paying or requiring certain activities or hours from their volunteers, that they are not creating a legally binding relationship for that work.
- Working half of a role in a paid capacity and the other half as a volunteer to save costs for the Church – this would cause problems if the volunteer role performed is in fact the same role undertaken on a paid basis. The whole time spent working may actually be covered for the purposes of calculating the National Minimum Wage. However, this does not prevent an employee from carrying out voluntary activity for an organisation by which they are employed, but this should be a distinctly different role from the paid work that they perform in order to avoid potential National Minimum Wage claims. For example, an employed receptionist could potentially volunteer as a youth leader as long as it is clearly a different role and not connected to her employment as the receptionist.
- Paying volunteers fixed payments to cover expenses and/or a gift or other benefit as a ‘thank you’ such as training or discounts. Caution should be exercised here as the payments or gifts may be seen as being given in return for their service. This does not prevent the provision of a gift as a genuine thank you for providing a one-off service to the Church, e.g. taking photographs at a church event. However, where the payments are expected by the individual as opposed to being a genuine gift, this may suggest the intention to create a legally binding contract, such that the individual is considered to be a worker or employee.
- Receiving charitable donations specific to one of your volunteers and then claiming gift aid on those gifts and paying the total to the volunteer. This could be regarded as sufficient evidence of a salary being paid in return for work being done to create an employment relationship. Just because the source of the payment from the church is funded by others, it doesn’t change the fact that the salary payment is made by the church.

How to try to avoid the pitfalls and claims:

1. Make payments of reasonable expenses actually incurred or benefits that are reasonable in the circumstances of their voluntary activity only;
2. Do not make payments that could be classed as ‘consideration’ or remuneration in return for the volunteers’ time;
3. Ensure that if volunteers receive training, that this is directly relevant to the voluntary role they are performing and not a benefit provided to them in exchange for their work;



4. Do not place an obligation on the volunteer to perform the work, ensure that there is flexibility e.g. they can refuse to carry out the work, so that there is no legal obligation to perform the duties;
5. Do not use contractual language when entering into arrangements, set 'reasonable expectations', not absolute requirements; and
6. Consider putting in place a volunteer arrangement that sets out expectations and makes clear there is no intention to create a legally binding contract. Anthony Collins Solicitors have collaborated with Stewardship to create a 'volunteer pack' (which provides some further detailed advice and a template volunteer agreement). For more details please see below.

## further information

If you have a particular issue or concern and think you may need advice, then please contact Sarah Patrice of Anthony Collins Solicitors on 0121 212 7494 ([sarah.patrice@anthonycollins.com](mailto:sarah.patrice@anthonycollins.com)). Alternatively, or in addition to seeking advice, a copy of the Stewardship volunteer pack, or the Stewardship employment contract pack for church workers (which provides some further detailed advice and a template employment contract), are both available from Stewardship. Please see the link below for more information:

<http://www.stewardship.org.uk/support-services/consultancy:-employers>