

This **Guidance Note – Volunteer** is intended to provide guidance for either a charity or a group of volunteers where the Group is carrying out an activity on behalf of the charity.

In particular, this guidance is intended to:

- (i) enable a charity to instruct a Group on how to carry out its relationship with the charity;
- (ii) assist a Group to decide how to carry out its relationship with the charity's requirements as to how it should be run.

This note deals with groups rather than individuals. (The principles will apply to individual volunteer fundraisers, a beneficiary of the charity, or a celebrity.)

1. Who is a volunteer?

It is very important to distinguish between a volunteer group and a group. Quite different legal consequences apply to groups that are not acting as volunteers. A group may be a "Commercial Participator" or "Professional" under employment law (if they are actually employed).

In law, a volunteer fundraising group is a group of people who, *without payment or other material benefit*, raise money or other resources for a charity. This could include a group formed as "friends of a charity".

In some cases, it may not be clear whether a group is a volunteer group. For example, in the case of an entertainer providing a charity fundraising event where he derives publicity by virtue of being involved, legal advice should be taken.

If the Group only receives reimbursement of out-of-pocket expenses actually incurred by them, that will not be a material benefit.

In this note, "Group" means only a group of volunteers.

2. Types of Group - 'on behalf of' a charity

There are two main types of Group acting on behalf of a charity. Those acting 'in aid of' a charity, and those acting 'in the name of' a charity.

3. Distinction between 'on behalf of' and 'in the name of'

Where a Group acts with special authority on behalf of a charity, but where it acts entirely on its own behalf, it does not represent the charity. This arises from the legal principle that a person is its "agent" and is responsible for his or her acts when those acts are within the scope of the organisation's "agent", it is not responsible for its own acts.

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There are two main types of Group acting on behalf of a charity, and those acting 'in aid of' a charity, and those acting 'in the name of' a charity.

Where a Group acts with special authority on behalf of a charity, but where it acts entirely on its own behalf, it does not represent the charity. This arises from the legal principle that a person is its "agent" and is responsible for his or her acts when those acts are within the scope of the organisation's "agent", it is not responsible for its own acts.

Reflecting this in practical terms: (i) if the charity fundraises, the charity knows that it is providing advice and resources; and (ii) an individual acting on its own initiative, and the first time the charity receives a payment from the Group.

It will not always be easy to distinguish between the Group, but it is important to do so.

For this reason, where a charity has a relationship with the Group, the charity needs to make it clear in the name of the charity.

4. A Group acting “on behalf of” the charity

If the charity acts in such a way that it is reasonable to believe that the Group has authority from the charity as acting “on behalf of” the charity, then if something goes wrong, the charity will be liable.

However, an ‘on behalf of’ relationship can be a desirable or even necessary for the charity. Activities might be much more successful if the Group and the charity. In order to take place, for example the Group might need the charity’s support.

A charity should consider the fit between the Group with the Group what support should be provided if the charity is able to make available to the Group.

The more support a charity offers to the Group, the more it becomes an ‘on behalf of’ one.

5. A Group acting “in aid of” the charity

Normally, a Group will not be the charity, and the charity will consequently not be the Group.

- the Group states that it acts on behalf of the charity;
- the Group is quite separate from the charity;
- the Group is simply raising money for the charity; and
- the charity avoids giving the Group any implied authority to act in its name.

If a charity wants an ‘in aid of’ relationship with the Group that:

- the Group may not take any decisions on behalf of the charity;
- the Group may not commit the charity;
- the Group must ensure that it is fundraising “in aid of” the charity;
- if the charity’s logo is being used, the Group must use an agreed format, such as “[name of Group]: fundraising for [name of charity]”, with the scope for the use of the logo being clear.

The Group has authority from the charity to act on its behalf. It may help the Group by providing advice and resources; and (ii) an individual acting on its own initiative, and the first time the charity receives a payment from the Group.

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For this reason, where a charity has a relationship with the Group, the charity needs to make it clear in the name of the charity.

If the charity acts in such a way that it is reasonable to believe that the Group has authority from the charity as acting “on behalf of” the charity, then if something goes wrong, the charity will be liable.

However, an ‘on behalf of’ relationship can be a desirable or even necessary for the charity. Activities might be much more successful if the Group and the charity. In order to take place, for example the Group might need the charity’s support.

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Even if the Group states that it is acting in aid of a charity, it may be acting inappropriately or improperly in relation to the charity. Charities might then need to take steps to ensure that the Group is acting in aid of the charity when it is actually going to act in aid of the charity correctly, but the situation could change over time. The ongoing 'in aid of' status of the Group should be monitored and does from time to time.

6. General:

Insurance - it is important that the charity knows the limit of insurance cover which the charity's insurance cover provides, so that they know when cover is available and when it is not.

Tax and VAT - Certain fundraising activities are exempt from VAT if organised by a charity. If the Group is acting in aid of a charity, it can fall within that exemption. If, however, the Group is not acting in aid of a charity then, in the hands of the Group, the profits may be subject to income tax. HMRC will not accept that a Group acting in aid of a charity is exempt from income tax.

Intellectual property - Intellectual property rights (including copyright) belong to the Group. If the Group is acting in aid of a charity, then before the Group starts its activities, it should ensure that it has assigned the rights from whichever individuals it is acting in aid of to the charity.

Trusteeship of funds raised - If the Group is acting in aid of a charity, then any money raised by the Group for the charity is a trustee of the money. It is essential that the Group ensures that the money is held in a separate bank account and ensure that, for safety, a proper arrangement is made for the money to be transferred to the charity as soon as practicable. Charities should assist in it reclaiming Gift Aid). If the Group is acting in aid of a charity, then the charity to request the Group to transfer the money to the charity. The charity should have a system in place to follow up on the money raised. Small amounts raised might be justifiably ignored, but the charity should bear in mind the possible impact of the money on the charity's finances.

If the Group is acting in aid of a charity it might actually be acting in aid of the charity and "on behalf of" the charity. The Group claiming to act 'in aid of' the charity might initially be acting in aid of the charity, but the charity can check on the ongoing status of the Group to ascertain what the Group actually is acting in aid of.

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Intellectual property rights (including copyright) created by a Group will belong to the Group. If the Group is acting in aid of a charity, then before the Group starts its activities, it should ensure that it has assigned the rights from whichever individuals it is acting in aid of to the charity.

If the Group is acting in aid of a charity, then any money for a charity from other sources should be transferred to the charity as soon as the Group receives it. It is therefore essential that the Group ensures that the money is held in a separate bank account and ensure that, for safety, a proper arrangement is made for the money to be transferred to the charity as soon as practicable. Charities should assist in it reclaiming Gift Aid). If the Group is acting in aid of a charity, then the charity to request the Group to transfer the money to the charity. The charity should have a system in place to follow up on the money raised. Small amounts raised might be justifiably ignored, but the charity should bear in mind the possible impact of the money on the charity's finances.