

# Right to work checks for volunteers at the University of Cambridge

## 1. Summary

The following paper outlines the University's position on right to work checks for volunteers where engaged by the University to undertake voluntary activity. This is placed in the context of whether checks should be undertaken in line with those conducted upon employees, workers and temporary workers at the University.

The policy was initially created in 2016, and was reviewed and updated in November 2021.

In summary, the University's position on right to work checks and volunteers is that it is reasonable from both a risk and an administrative perspective to operate the following discretion regarding right to work checks for volunteers:

1. All voluntary activity must be conducted in line with the University's definition of a volunteer (as set out below).
2. Provided that definition is met, right to work checks for volunteers do not have to be conducted provided the activity is for **no more than 30 days in a Term**.
3. Where engaging students who hold a Tier 4/Student visa, they must be notified prior to the activity commencing that they are subject to a limit on the number of hours they can volunteer during term time (normally no more than 20 hours per week, which are not in addition to any other paid or unpaid work they are undertaking in the UK).
4. All other volunteers engaged for periods outside of the 30-day concession will require a right to work check in line with those conducted for employees/workers at the University.

The following legislation is relevant to the University's position on this matter, either because it has influenced its introduction and/or its content:

- Immigration Act 1971
- Immigration, Asylum and Nationality Act 2006
- The Immigration (Restrictions on Employment) Order 2007 (as amended)
- Immigration Act 2016
- Code of Practice on preventing illegal working (last updated June 2021)
- Employer right to work checks supporting guidance (last updated August 2021)

## 2. Volunteering at Cambridge

There are a wide variety of departments with the University that offer volunteering opportunities. The definition of a volunteer at University of Cambridge is set out as follows (as provided by the National Council for Voluntary Organisations):

“Generally, volunteering is described as an unpaid activity where someone gives their time to help an organisation or an individual to whom they are not related, and from which they gain no significant or tangible benefit or remuneration.

People volunteer for many different reasons. They may choose to volunteer to develop skills or gain experience, to socialise or to give something back to society. They may also volunteer because they feel a moral duty or compelling reasons to take part in this voluntary action or support a particular cause. The key element is that it is freely undertaken.

The term volunteering does not apply to Cambridge staff undertaking an activity which might reasonably be seen to be part of their role at Cambridge.”

It is within this definition that relevant departments will engage volunteers at the University.

## 3. Legislative context

Under Section 24B of the Immigration Act 1971, and Sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006, all employers in the UK have a duty to prevent illegal working in the UK by carrying out prescribed document checks on person’s who are employed or work for them.

In the context of the above legislation, the definition of ‘work’ or ‘working’ in respect of the duty to prevent illegal working is defined by Section 24B of the Immigration Act 1971 (as amended by the Immigration Act 2016):

“The reference ... to a person working is to that person working—

- (a) under a contract of employment,
- (b) under a contract of apprenticeship,
- (c) under a contract personally to do work,
- (d) under or for the purposes of a contract for services,
- (e) for a purpose related to a contract to sell goods,
- (f) as a constable,
- (g) in the course of Crown employment,
- (h) as a relevant member of the House of Commons staff, or
- (i) as a relevant member of the House of Lords staff.”<sup>1</sup>

Furthermore, Section 25 of the Immigration, Asylum and Nationality Act 2006 provides a definition of ‘employment’ in respect of the duty to prevent illegal working:

“A reference to employment is to employment under a contract of service or apprenticeship, whether express or implied and whether oral or written.”

---

<sup>1</sup> <https://www.legislation.gov.uk/ukpga/1971/77/section/24B>

In specific regard to volunteering, the Home Office provide limited guidance on who they define as a volunteer in the context of right to work checks:

“Individuals, including students, who have been granted immigration permission to be in the UK are permitted to volunteer. Visitors can volunteer for a registered charity for a maximum of 30 days during their visit, but volunteering cannot be the main purpose of their visit.

Individuals who have limited permission to work in the UK may not carry out any voluntary work. The legal distinction between volunteering and voluntary work can be quite complex. However, there are some key questions to consider when assessing whether an activity is voluntary work:

It is likely to be voluntary work if:

- there is an obligation on the individual to perform the work and in return an obligation on the organisation to provide it. The obligation does not have to be in writing.
- the individual is rewarded for that work, either through money or benefits in kind.

An obligation to work or receipt of remuneration is likely to mean that the individual is working under a mutuality of obligation. Where there is mutuality of obligation, it is voluntary work.

An individual who is not permitted to work might commit a criminal offence by engaging in voluntary work when they are subject to contractual obligations. In such circumstances, their employer might also be liable for a civil penalty for employing an illegal worker.”<sup>2</sup>

Where obligation exists to undertake a right to work check, the employer must ensure that this is completed before the work commences, and the relevant documentation must be retained for a minimum period of two years beyond the end of the engagement/employment.

Where an employer knowingly or unknowingly allows a person with no legal status in the UK to ‘work’ or be ‘employed’ by them, there is a statutory fine of £20,000 per illegal worker, levied on the employer, and potential criminal penalties. Furthermore, incurring a single civil penalty under the illegal working regime would place the University’s Skilled Worker and Temporary Worker sponsor licenses at risk. Loss of sponsor licenses would result in all ‘sponsored individuals’ at the University immediately being dismissed and their permission to be in the UK curtailed.

---

<sup>2</sup> Employer right to work checks supporting guidance, page 53:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1014298/2021.08.31\\_Employers\\_Guide.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1014298/2021.08.31_Employers_Guide.pdf)

## Legislative context in relation to volunteers at Cambridge

In mitigation against such risks, where considering if right to work checks apply to volunteers at the University, it is noted that volunteers at the University are issued with a non-binding volunteer agreement during the terms of their engagement. However, this agreement could not in any way be classed as a 'contract' or 'contract of services' such as would amount to those set out above, by way of the Immigration Acts of 1971 and 2006.

On this basis, volunteers engaged by the University would not fall within the definition of 'work', 'working' or 'employment' as defined by the relevant Immigration Acts.

Furthermore, where there is no contract or contract of services it is considered that volunteers would not fall within the limited definition of 'voluntary work' as set out by the Home Office (as above), because there is no mutuality of obligation between the University and its volunteers.

**In conclusion, provided any volunteering activity is carried out within or under the auspices of the University of Cambridge, and in line with the University's definition of volunteering, as an employer our obligations in relation to our duty to prevent illegal working are not directly invoked.**

Notwithstanding this, there are reputational risks to consider in the context of unknowingly engaging with a person who does not have the legal right to reside in the UK. Where a person was illegally present in the UK, this would loosely be defined as one of the following:

- a person who entered the UK clandestinely/illegally, or
- a person who has overstayed their current visa/permission to be in the UK, or
- a person who is undertaking volunteering where that is not permitted by way of their visa conditions.

Whilst it is impossible to fully mitigate against the possibility of engaging with an 'illegal worker' without completing right to work checks on all volunteers, it is relevant to consider that the types of individuals the University commonly engage as volunteers are highly unlikely to be in willful breach of immigration control.

In addition, the risk of engaging with a person where their visa conditions/immigration status prevents them from volunteering can be mitigated by way of the following guidance from the Home Office:

"Individuals, including students, who have been granted immigration permission to be in the UK are permitted to volunteer. Visitors can volunteer for a registered charity for a maximum of 30 days during their visit, but volunteering cannot be the main purpose of their visit." <sup>3</sup>

In practice, this means any individual with permission to be in the UK by way of a visa – whether that is a visitor visa, student visa or work visa, is permitted to volunteer in the UK. The caveat for visitors is that they can only volunteer for up to 30 days for a registered charity (Cambridge is classed as an 'exempt charity' and therefore qualifies for these

---

<sup>3</sup> Employer right to work checks supporting guidance, page 53:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1014298/2021.08.31\\_Employers\\_Guide.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1014298/2021.08.31_Employers_Guide.pdf)

purposes) as long as their reason for entering the country does not include the volunteering opportunity. Care should be taken where engaging with international students who hold a Tier 4/Student visa as they have restrictions on their ability to work and/or volunteer in the UK, which are restricted to 20 hours per week across any and all engagements/employers in the UK.

#### 4. Conclusion

Volunteering at the University of Cambridge is a very diverse area, encompassing a wide variety of roles, time periods and types of people.

From a risk perspective, volunteering as defined by the University would not come under the definition of 'work', 'working, or 'employment' for right to work purposes, and all non-UK nationals who have legitimately obtained leave to enter the UK have permission to volunteer, even if it is under limited circumstances.

An acknowledgment must also be given to the administrative burden for departments of undertaking right to work checks for all volunteers where it would not be reasonable necessary. As the majority of volunteering roles at the University are very short-term engagements, it would be highly impractical to undertake document checks and retain records in the prescribed manner given the volumes of volunteers and the time periods involved.

Taking all of the above together, it would be reasonable from both a risk and an administrative perspective to operate the following discretion regarding right to work checks for volunteers:

- All voluntary activity must be conducted in line with the University's definition of a volunteer (as set out below).
- Provided that definition is met, right to work checks for volunteers do not have to be conducted provided the activity is for **no more than 30 days in a Term**.
- Where engaging students who hold a Tier 4/Student visa, they should be notified prior to the activity commencing that they are subject to a limit on the number of hours they can volunteer during term time (normally no more than 20 hours per week, which are not in addition to any other paid or unpaid work they are undertaking in the UK). There are no restrictions during 'vacation' periods.
- All other volunteers engaged for periods outside of the 30-day concession will require a right to work check in line with those conducted for employees/workers at the University.

Graeme Ross  
Immigration & Compliance Manager  
HR Division

November 2021