

## Meeting Notes from Tautoko Network Meeting

March 2018

### VOLUNTEERS: WHO'S LIABLE WHEN SOMETHING GOES WRONG?

We were grateful to have the support of Susan from Community Law for this meeting. Susan talked through various scenarios and the roles that ACC and insurance plays in some cases. The importance of role descriptions was also raised - when a role description is clear, and if a volunteer operates outside of that role description, for example, where liability sits can be different than if they are operating within their role description. Here's a summary if you missed the meeting:

Any group which engages with volunteers should be aware of their liability for damages relating to volunteers. This means that your group should be aware that there are some circumstances in which they can be held liable for any losses suffered by, or caused by, one of their volunteers.

The fact that the person is a volunteer and isn't being paid doesn't make any difference to the group's liability. **The key issue is whether the person was acting on the organisation's behalf at the time the damage occurred.** If the volunteer caused the damage while working for the group, the group will generally be liable for this.

There are some exceptions to this rule. These exceptions include situations where the volunteer:

- is doing something that **isn't part of his or her role** and hasn't been agreed to by your group, or
- is acting **dishonestly**, or
- is performing the duties involved in his/her role but is doing them **very carelessly or negligently**, or
- has done something **that you couldn't have predicted or expected** when performing his/her role, or
- **hasn't followed the policies, procedures or guidelines you have provided** for the tasks s/he is performing.

To minimise the risk of a volunteer causing damage to your organisation, your colleagues or to others, we recommend you:

#### Job description and guidelines

- Provide a **clear job description** for the volunteer and check that s/he understands it
- Provide **clear guidelines** that the volunteer can refer to when performing his/her tasks
- If you become aware that a volunteer is struggling or refusing to work within your guidelines/procedures, **follow this up with them promptly** and check to confirm their understanding of the role and the parameters of the tasks you are asking them to perform
- Think carefully about keeping volunteers who **refuse or who struggle to work within your guidelines**. The general rule is that you wouldn't be held responsible for the actions of a volunteer that don't fall within your agreed protocols but this could change if you know they aren't following your rules but you continue to allow them to volunteer regardless
- If the **role or procedures change**, discuss those changes with your volunteers and support that conversation with an email or notice which summarises the key points

## Volunteer agreement

- Have a **written volunteer agreement** that links to the job description. The volunteer should be asked to sign the agreement which makes clear that s/he agrees to abide by your group's guidelines and any instructions from those overseeing his/her work.
- Depending on the work your volunteer does, it may be appropriate to have some kind of **regular review or refresher** meeting or training session. This is a good opportunity to remind volunteers of the importance of their work and the need for compliance with the job description.

## Train your volunteers

- Never put volunteers to work without **first giving them some training**. You will be held responsible for a volunteer's errors or inaction if you haven't first shown the volunteer what they are required to do, made sure that they can do it, and provided the training necessary to ensure they can.
- Training may involve **induction, one-on-one matching with a senior volunteer, refresher courses, handbooks, and regular email updates** etc. Tailor your training to suit your organisation's capacity and the volunteer roles.
- The training should cover not only what they should do **but also what they shouldn't**. Make the parameters clear.

## Insurance

- Check to see if your organisation's **insurance covers your volunteers**. If you're not sure, talk to your management team about emailing your insurers and ask.
- Where there are **gaps** in your cover, consider whether you need additional insurance or whether the organisation can afford to pay if there was a claim against you
- Let your **volunteers know** - in writing - if they would be wise to get their own insurance. Cover this at the induction phase and in your email communications.

## Procedures and spot checks

- It is an unfortunate fact of life that **things go wrong** - either because people's capacities diminish or details get forgotten once a role gets familiar. Don't assume that one-off training or a one-off police check is all that is required. If there are aspects of a volunteer role that carries risk, consider whether to build in some regular spot checks, reminders or training updates to ensure that volunteers stay on track.
- Set up **reporting back** procedures. Other volunteers should know who to talk to in confidence if they see something that gives them cause for concern. Think about how you would handle these situations and provide written material on this if appropriate.
- Don't rely solely on **police vetting** when considering the suitability of a volunteer – stay alert to the potential risks if you are working with vulnerable people

## Driving

- Your **volunteer agreement** should make clear that volunteers who drive for you must have a driver's licence and have (at a minimum) third-party insurance. They should also be asked to confirm that they have a registered and warranted vehicle (assuming they will be driving their own vehicle) and be willing to drive in compliance with the road rules. It may be

appropriate to suggest they check with their own insurance company to ensure they are covered for any accident that may occur while they are driving for your group

- Your agreement should also require that **your volunteer notifies you** if charged with any driving-related offence. Similarly, it is recommended that you ask the volunteer to notify you if they have any health-related event that may impact on their ability to drive for your organisation
- It may be appropriate, particularly if your volunteers are driving your clients, to undertake a **driving skills assessment** on a periodic and as-needed basis. Your volunteer agreement should record that the volunteer must undertake a driving assessment – at your group's expense – as and when required.