

**Note:** One of ARMA's key roles is to provide its members with technical support. However, from time to time, technical or other issues arise where guidance for lessees as well as their property manager is deemed appropriate. Such guidance is contained in these Lessee Advisory Notes (LANs) which ARMA members can copy and distribute to their clients and lessees as appropriate.

### SUMMARY

- In smaller blocks of flats, particularly those self-managed by lessees, lessees may want to take on gardening, cleaning work or other duties themselves.
- The immediate advantage of using such volunteers is one of keeping costs down.
- However, whether the volunteer is paid or not, unfortunately there are questions of legal liability, health and safety and insurance that need to be considered by the landlord and/or agent. These questions apply whether the landlord is a Resident Management Company (RMCo), Right to Manage Company (RTMCo) or not.

### ADVANTAGE OF LESSEES CARRYING OUT DUTIES

- Lessees have a personal knowledge of and interest in the block.
- Lessees may not require payment and so keep service charge costs down.
- Lessees may be flexible and adjust to what is needed at a particular time, whereas an employee or contractor will want regular work.

### SOME THINGS TO CONSIDER

#### 1. Health and Safety

The Health and Safety Executive has issued guidance about the use of volunteers, even those unpaid.

*"In general, the same health and safety standards should be applied to voluntary workers as they would to employees exposed to the same risks. However, if the risk assessment (which should be carried out) shows that the risks to voluntary workers are different, the preventive measures taken should reflect the different risks."*

*"HSE considers it good practice for a volunteer user to provide the same level of health and safety protection as they would in an employer/employee relationship, irrespective of whether there are strict legal duties."*

The HSE has published a guidance publication, HSG192, Charity and voluntary workers: a guide to health and safety at work.

#### 2. Risk Assessments

**You must have a risk assessment carried out of the proposed task and record it in case there are any disputes or accidents.**

#### 3. Equipment

If the lessee will need equipment and materials to carry out the tasks, who will supply them?

For gardening work a mower and tools are usually required. If the landlord buys the equipment he/she is responsible for the safety and proper use of it. You need to train the volunteer in safe use of the equipment. If the landlord provides any cleaning materials and products, a check needs to be made as to whether any contain hazardous materials. If a ladder is provided then a record of it and regular safety checks should be made. Any tools and equipment supplied must be fit for purpose and checked regularly. If power tools are used then you must carry out portable appliance tests on them.

#### 4. Insurance

If there is an accident either to the volunteer or to another person caused by the volunteer when carrying out the work, who is liable and is there insurance cover? If a landlord agrees to let volunteers carry out cleaning, gardening or similar duties then there will normally be no public liability or personal accident insurance cover if

a volunteer has any accident or causes any damage carrying out that work. In order to forestall any question of legal cases in an accident, the landlord should either take out additional insurance cover for the volunteer or insist upon and demand to see the insurance cover taken out by the volunteer at his/her cost.

### 5. Employee or Contractor?

Whether a volunteer's status is as a contractor or an employee is easily open to dispute. It is best to make things as clear as possible.

If payment is made then there is clearly a legal relationship and the landlord/agent should have a clear written agreement setting it out. One choice is to make the volunteer an employee. If this is done then there will be a requirement for a risk assessment of the tasks and questions of tax and insurance arise on any payments made. Also, if the employee is sick, there will be a liability for sickness payments.

If the choice is to make the lessee a contractor then the lessee will have to arrange his/her own insurance cover and submit invoices. As a contractor the volunteer will have more responsibility for their own safety and standard of work. However if a landlord or agent can see that work is being undertaken in a way that is not safe then there is a duty to intervene.

### SOME DISADVANTAGES OF LESSEES CARRYING OUT DUTIES

- If problems arise over the standards of performance of the volunteers it can lead to difficulties. Criticism by neighbours of the volunteer can cause ill-feeling.
- Alternatively if the landlord or the agent has to criticise or sack a volunteer for poor performance, that can lead to a complete breakdown of that particular landlord/lessee relationship.
- If the volunteer becomes sick or goes on extended holiday then there is not immediate cover as one would have with a firm of contractors.
- Often an initial burst of enthusiasm to, say, attend to garden areas peters out and the standard of maintenance becomes unacceptable.
- Equipment bought for volunteers can soon become redundant if the volunteers stand down and no one wishes to volunteer.
- By using volunteers service charges are saved and kept low. If the volunteer arrangement falls through and a contractor has to be brought in, lessee's expectations of the service charge have been set low and suddenly increased costs can cause unrest.

### FURTHER INFORMATION

HSG192, Charity and voluntary workers: a guide to health and safety at work. Downloadable from <http://www.hse.gov.uk/pubns/books/charity.htm>.

Directors' responsibilities for health and safety- downloadable from <http://www.hse.gov.uk/pubns/indg343.pdf>

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*Whilst every effort has been made to ensure the accuracy of the information contained in this Lessee Advisory Note, it must be emphasised that because the Association has no control over the precise circumstances in which it will be used, the Association, its officers, employees and members can accept no liability arising out of its use, whether by members of the Association or otherwise. The Lessee Advisory Note is of a general nature only and makes no attempt to state or conform to legal requirements; compliance with these must be the individual user's own responsibility and therefore it may be appropriate to seek independent advice.*