



ADVICE NOTE

CARRYING OUT YOUR OWN WORK TO YOUR BLOCK

Advice for leaseholders who want to do their own
gardening, cleaning and other work

Note:

As the leading trade body for residential leasehold management, ARMA is also an important resource for leaseholders. Our Advice Notes cover a range of topics on the leasehold system to help leaseholders understand their rights and responsibilities and ultimately get the most out of living in their flat.

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SUMMARY

If you live in a smaller blocks of flats, particularly if it's self-managed, you or your fellow leaseholders may want to carry out gardening, cleaning or other work to the building yourselves.

The immediate advantage of doing this is that it can keep costs down. But there are important legal, health and safety and insurance issues that need to be considered by the landlord.

Remember, the landlord could be a Residents' Management Company or Right to Manage Company if one is in place.

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THE ADVANTAGES

Let's start with some advantages of carrying out your own work to your block:

- As a leaseholder you have a personal knowledge of and interest in your block
- The volunteer may not require payment so this will keep service charge costs down
- The volunteer may be flexible and able to adjust to what's needed at a particular time, whereas an employee or contractor will want regular work

IMPORTANT THINGS TO CONSIDER

Health and Safety

Here's what the Health and Safety Executive (HSE) has to say about using volunteers:

"The Health and Safety at Work etc Act 1974 (HSW Act) is criminal law aimed at protecting employees and others who may be affected by work activities. It is enforced mainly by HSE and local authorities. Health and safety legislation does not, in general, impose duties upon someone who is not an employer, self-employed or an employee."

"It is not possible to sue for damages under the HSW Act itself although a breach of health and safety regulations may be cited as part of a civil claim for compensation based on a breach of statutory duty."

"Under the common law, voluntary organisations and individual volunteers have a duty of care to each other and others who may be affected by their activities. Where something goes wrong, individuals may, in some cases, sue for damages using the civil law if they are injured as a result of another person's negligence. But, for a negligence claim to succeed, the injured person must show that the defendant had a duty to take reasonable care towards them, and they have suffered the injury through a breach of that duty. The injured person must also show that the type of loss or injury for which damages are being claimed was a foreseeable result of the breach of the duty."



Have you carried out a risk assessment?

It's wise to carry out a risk assessment of the proposed task and record it in case there are any disputes or accidents.

Who will supply the equipment?

If your landlord supplies the equipment (gardening tools or a mower for example) then they are responsible for the safe and proper use of it.

Remember your landlord could be a Residents' Management Company (RMC) or Right to Manage Company (RTM) if one is in place.

If you're a director of your RMC or RTM and have agreed to let a volunteer carry out work to the block, then you need to train them in safe use of the equipment.

Any tools and equipment supplied must be fit for purpose and checked regularly. And if power tools are used then you must carry out portable appliance tests on them. Ladders also need to be recorded and regular safety checks made. If cleaning products are supplied, they need to be checked for hazardous chemicals.

Do you have insurance?

It's important to consider what happens if the volunteer has an accident, or if they cause an accident to someone else, when carrying out work. Who is liable and is there insurance cover?

If a landlord agrees to let volunteers carry out work, then public liability or personal accident insurance won't normally be in place.

Landlords should either take out additional insurance for the volunteer, or insist upon and demand to see the volunteer's own cover. This will help prevent any legal disputes if they have an accident or cause any damage when carrying out the work.

Employee or contractor — what's in a name?

Landlords needs to consider what status a volunteer will hold, regardless of whether or not they are paid. If things go wrong will the law regard them as an employee or a contractor?

If the volunteer is paid then there is clearly a legal relationship, so the landlord should have a clear written agreement setting that out.

One option is to make the volunteer an employee. But you will have to carry out a risk assessment of all their tasks. Questions will also arise over tax and insurance on any payments made and if the employee is sick, there will be a liability for sick pay.

You could also designate the volunteer as a contractor. In this case, they will have to arrange their own insurance cover and submit invoices for payment. As a contractor the volunteer will also have more responsibility for their own safety and standard of work. But if a landlord or their agent sees work being done in an unsafe way, they have a duty to intervene.

THE DISADVANTAGES

Here's a few disadvantages to consider:

- Disagreements between neighbours may arise over the standard of the volunteer's work, which could cause ill-feeling
- The landlord or their agent may criticise or even sack a volunteer for poor performance, leading to a complete breakdown of that relationship
- If the volunteer becomes sick or goes away, there's no immediate cover as there would be with a firm of contractors
- Often an initial burst of enthusiasm peters out and the standard of work declines
- Equipment bought for volunteers can soon become redundant if they stand down and no one wishes to take their place
- Service charges are usually kept low by using volunteers. If the arrangement falls through and a contractor has to be brought in, services charges could suddenly increase.



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FINAL WORD

For leaseholders living in smaller blocks, using resident volunteers to carry out certain work can be an attractive option. It can keep service charge costs down and personal knowledge of the building means work can be done selectively. But there are some very real responsibilities that come with this approach and the pros and cons should be weighed up in equal measure.

FURTHER INFORMATION

To read the full **HSE Guidance on Health & Safety and volunteers** visit: www.hse.gov.uk/pubns/indg343.pdf

Download the **HSE's guide to the health & safety responsibilities of company directors** here: www.hse.gov.uk/pubns/indg417.pdf

Note:

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The ARMA 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.