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Charity Law Unit

Charities and the New Deal for Young People

Debra Morris

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Charity Law Association**

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Charity Law Unit
University of Liverpool
Liverpool L69 3BX

tel: 0151 794 3086
fax: 0151 794 2884

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THE CHARITY LAW UNIT

The Charity Law Unit was established in October 1994 to provide a focus for the already well established reputation of the Faculty of Law, University of Liverpool for research and teaching in Charity Law. The Charity Law Unit has grown from strength to strength since its establishment and it is the only such unit in England and Wales.

The Charity Law Unit's mission is to be recognised as the centre of excellence for legal research of the charity sector. It aims to do this both by responding fully to the demands for legal research raised by the charity sector and by being pro-active in highlighting and pursuing legal research in areas where the law and its application requires clarification, guidance or possible reform.

The report, *Charities and the New Deal for Young People*, was written by Debra Morris, Director of the Charity Law Unit. She is author of *Schools: An Education in Charity Law*, published by Dartmouth Press in 1996, and she is assistant editor of the leading text on Charity Law, *Tudor on Charities*, published by Sweet & Maxwell. She is also case note editor of *Charity Law & Practice Review* and has written many articles in the area of Charity Law.

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This research was supported by a scholarship from the Charity Law Association. The Charity Law Association was established at the end of 1992 with the aim of enabling those who advise on or use charity law to meet together, to exchange ideas and intelligence and to use their experience and expertise for the benefit of the charity sector. To ensure that it is free to promote any changes to charity law which appear to its members based on their expertise in their field, to be necessary or desirable the Association is not itself a charity. The Association currently has over 650 members including many of the country's largest charities and most leading charity lawyers.

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OVERVIEW

The New Deal for Young People, the flagship welfare to work programme, has moved more than 250,000 people off benefits and into work since its inception. The merits (or otherwise) of the scheme for the unemployed and the quality of service provided to them has been the subject of a number of reports (see Bibliography). This report is based on the Charity Law Unit's research project which aimed to look at the role of *charities* in the delivery of New Deal through their involvement in the delivery of the Voluntary Sector Option (VSO).

The key findings are:

- While New Deal has brought many positive elements to the charitable sector it has also provided a challenge for many organisations;
- Charities are entering into contracts to deliver New Deal without the benefit of legal advice;
- Many charities are using their own charitable resources to fund their involvement in New Deal;
- Charities receiving placements under the VSO often find that the young people require 'extra support';
- The wide diversity of delivery arrangements for New Deal, shaped by previous local partnership arrangements, local administrative networks and local labour market conditions, makes it extremely difficult to provide general guidance on its operation; and,
- Similarly, continuous improvement to the programme means that New Deal is subject to constant change and evolution.

The key recommendations are:

- The dual challenge for charities of coping with disadvantaged young people and increasing their ability to secure sustainable employment should be acknowledged;
- Funding of the VSO should recognise the increased investment needed to achieve positive outcomes for the most disadvantaged young people who end up on this option;
- Contracts for the delivery of New Deal require flexibility to accommodate individual situations of both participants *and* placement providers;
- There should be a requirement for funding to be passed on to charities providing placements by VSO administrators;
- A national framework should set minimum funding for placement providers; and,
- Charities should only become involved in New Deal where it has clear advantages for them and is in line with their charitable objects.

INTRODUCTION

The New Deal for Young People is a government scheme to assist young people (18-24 year olds) who have been unemployed for more than 6 months back into full time employment by giving them practical work experience and training. Like many current government schemes, New Deal has spawned its own language, signified by the use of italics in this report. New Deal was launched in 12 *Pathfinder* areas in January 1998, then rolled out nationally in April 1998. The scheme reached its manifesto target of moving 250,000 young people off benefits and back into work in November 2000 (New Deal Press Notice, 2000). This work focuses on New Deal for Young People. That programme was rapidly followed by other New Deal programmes (some compulsory, others voluntary), including New Deal for the Long-term Unemployed, New Deal for Lone Parents and New Deal for Disabled People. Further references in this report to 'New Deal' refer to the New Deal for Young People.

Participation in New Deal is mandatory for those who have been unemployed and claiming Jobseeker's Allowance (JSA) for 6 months or more. The scheme begins with a period of *Gateway* during which a *Personal Advisor* provides job search training and advice to a *New Dealer*. If *New Dealers* remain unemployed at the end of *Gateway*, they are required to take up one of five *Options*: self employment; subsidised employment; full-time education and training; environmental task force option; or, voluntary sector option. If an *Option* is rejected without good cause, then benefit sanctions will be imposed.

The country is divided into Employment Service (ES) regions, which in turn are divided into *Units of Delivery* (UD). Each UD (there are 142 in total) has a New Deal programme, where local employers, local authorities, training providers, local enterprise companies, Jobcentres, environmental groups and the voluntary sector form local partnerships, with the aim of delivering New Deal in a way that is right for their particular area. Local flexibility means that each UD has adopted its own administrative regime to deliver New Deal, and it is difficult to describe (or indeed discover) exactly how provision is made in any UD. Ordinarily, within each UD, each *Option* has an option administrator, who co-ordinates provision for that option. In some UD's, an administrator may organise more than one (or even every) *Option*. Whilst most regimes use administrators as intermediaries between ES and the bodies who actually provide placements (Individual Placement Providers – IPPs), it is possible for ES to administer New Deal itself within a UD so that there is a direct relationship between ES and IPPs.

This research concentrates on the VSO, where young people are placed with a charity to complete their six month work placement. A *New Dealer* who opts for the VSO may be paid a wage directly by the charity. Alternatively (and more usually), the *New Dealer* is guaranteed a training allowance equivalent to normal benefits, plus £400 for the six months duration of the *Option*. Other 'passport' benefits, such as housing benefit, continue as before. Under the VSO, work experience is combined with the equivalent of one day a week in training and the placement must be one that will not only increase the *New Dealer's* employment chances but will also provide a discernible benefit to the community and to the IPP.

THE RESEARCH PROJECT

This report presents findings from a project the aim of which was to examine the practical experience of charities who had become involved in the delivery of New Deal and to provide guidance for the future. A small local study of charities' involvement in New Deal has already been undertaken by members of the Charity Law Unit (Cartwright and Morris, 2001). This original study suggested that:

- The funding structure may mean that charities are using their own charitable resources to fund their involvement in New Deal;
- The scope of charities' potential liabilities within contracts may compromise the integrity of charitable resources;
- A striking feature of New Deal contracts is their local variations, which have varying effects upon charities' resources and their ability to pursue their core charitable purposes; and,
- A problem for charities is the obscurity of the law governing New Deal and similar programmes. It has little statutory underpinning and can be termed an area governed by 'Leaflet Law' where the law itself and advice upon implications for charities of their involvement is difficult to obtain.

Whilst the original research was largely theoretical, this project aimed to back up those conclusions with empirical evidence.

The research methodology adopted for this project was both quantitative and qualitative. Initial research discovered that there were different categories of parties with whom charities, as IPPs, may be contracting to deliver New Deal. By comparing regimes in different UD, where charity IPPs would be in legal relationships with different types of third parties (e.g. other charities, ES, private sector organisations) the aim was to compare contractual provisions and practical experiences. Four basic delivery models for New Deal have emerged (Woodfield et al, 2000):

- ES individual contracts with individual providers, which may involve a contract with one organisation representing a number of others;
- ES consortia in which ES has a contract with a lead organisation representing a consortium. The consortium delivers the majority of New Deal;
- An ES regional contract with a Joint Venture Partnership, in which all partners, including ES, are equal; and,
- ES contracts with a private sector organisation, which leads the delivery of New Deal.

After five pilot interviews were conducted with local IPPs, four UD, with different administrative structures for delivery of New Deal, were chosen for study. These were identified by studying previously published research on the progress of New Deal (e.g. NCVO, 1998) and from contact with ES:

- In Area 1, a *Pathfinder* area, all elements of New Deal are run by a single private sector organisation;
- In Area 2, the VSO is run by the local Council for Voluntary Service, which itself is a member of a Joint Venture Partnership created specifically to run New Deal within the Area;
- In Area 3, a *Pathfinder* area, the VSO is run by the City Council which, as a lead organisation representing a consortium, has a direct contract with ES; and,

- In Area 4, there is direct contracting between ES and IPPs for all elements of New Deal. Areas 1, 2 and 4 are inner city areas, whereas Area 3 is a rural area, heavily reliant on tourism and farming.

Within each UD:

- contracts were collected (where available) and analysed, to identify and compare their precise legal implications for charities that are parties to them;
- A questionnaire was sent to every VSO IPP, to determine the practical implications of the contractual arrangements; and,
- Semi-structured interviews were conducted with the VSO administrator (where this proved possible).

The response rate to the written questionnaire was 46% (above average) and SPSS, a Microsoft quantitative data analysis package, was used to analyse responses. In relation to the contracts themselves, it has proved extremely difficult to access documents. In Area 2, ES would not allow the VSO administrator to produce its contract. In Area 4, ES would not provide a sample contract. In fact, in Area 4, data collection has been very difficult. The only point of contact is the regional ES, that has failed to supply contracts or allow its representative to be interviewed.

Given the fact that only 4 UDs have been examined and that each has a relatively small number of charities involved as IPPs, obvious caution needs to be applied to the interpretation of the findings presented. The findings do, however, largely correspond with those of other studies, which will be referred to as appropriate.

The IPPs

Of the IPPs responding, a large proportion (68%) were involved in training work and this may explain why they generally reported that New Deal had been run with some success. These charities already have experience of working under training contracts and have some idea of what to expect. A high percentage also said that they were involved in community work (59%) and youth work (41%). Most charities were offering either a very small or quite a large number of placements:

- 46% offered only 1-5 placements;
- 27% offered more than 15 placements.

The Contracts

For those charities participating in New Deal, contracts, in which ES plays a crucial role, form the main basis of legal relations. Charities 'signing up' to provide placements under New Deal can find themselves contracting with a private sector company, direct with ES, with the local Council for Voluntary Service, with the local authority, or with a consortium specifically established to administer the VSO. Clearly, some organisations will be used to dealing with charities, and their sub-contracts and practical arrangements may well reflect this. There will be others though who are less aware of the precise financial, administrative and regulatory regimes under which charities operate.

Although it has only proved possible to analyse contracts between VSO administrators and IPPs from 2 UD's (Area 1 and Area 3), it is nevertheless possible to make some interesting observations. At a very basic level, the contract used in Area 1 (drawn up by a private sector body) is extremely long (87 pages), comprehensive in its detail and couched in legal jargon, whereas that adopted in Area 3 (drawn up by the local authority) is much shorter and more user-friendly. The Area 1 contract appears to be applicable to IPPs in each *Option* (i.e. it is not geared specifically to the needs of the charity IPPs within the VSO) whereas the Area 3 contract, termed a 'placement agreement', is drawn up solely to cover the VSO.

To give some idea of the breadth of the Area 1 contract, it includes clauses dealing with issues ranging from 'Year 2000 Compliance', 'Citizens Charter', 'Compliance with Legislation' (including *inter alia*, the Prevention of Corruption Acts 1889 to 1916) through to 'Intellectual Property Rights' and 'Data Protection'. By contrast, Area 3's contract contains a simple list of both the IPP and the VSO administrators obligations, phrased very generally and with many important omissions. It is not uncommon nationally for there to be such lack of uniformity in relation to the formal arrangements with IPPs. For example, research undertaken on the VSO in London found only just over half (56%) of IPPs reported having a written contract at all (Van Doorn and Pike, 1999).

The contracts between ES and the VSO administrators are drawn up by ES. Whilst in each UD studied, the contracts between the VSO administrator and each IPP were drafted by the VSO administrators' lawyers, they very much followed ES guidelines in doing this and so the contracts basically mirror the 'parent contract' between ES and the VSO administrators. ES expect this and it is part of the obligation of the VSO administrator in its contracts with ES to ensure that certain issues are covered in contracts with IPPs. This means that New Deal contracts throughout the country contain many similar terms. However, at the same time, there is a great deal of regional variation in the contracts. This variation often relates to substantial points, such as how liability is allocated and the precise level of payments.

Only a few IPP respondents said that they had been able to renegotiate clauses within the contract, and these were fairly evenly spread through the UD's. Clauses which were renegotiated were about: delivery of training; copyright of programmes; outcome funding; staff training and supervision; and, sub-contractors.

When asked about the burden of contracts, mixed messages were received:

- Each VSO administrator interviewed felt that the contract did not place any undue burden on the IPPs in their area;
- However, more than two thirds of the IPPs who responded felt that complying with the contracts was onerous.

Even the IPPs themselves were unclear as to their perception of the contracts:

- Whilst 82% said that their contract clearly sets out what is expected of them and even more (96%) were sure that they had fulfilled their contractual obligations;
- Less than half felt confident that they had understood their contractual liabilities!

To give an indication of the sense of confusion, 54% of respondents could not agree with the statement: 'the organisation feels confident that it understands the extent to which it would be liable to pay damages to New Deal participants, subcontractors or any other third parties in the event of a breach of contract'. This is in line with earlier research (NCVO, 1998) where the universal experience of the voluntary sector in contracting for New Deal delivery

was that the process was 'bureaucratic, unwieldy, complex and rigid'. Similarly, the research on the VSO in London (Van Doorn and Pike, 1999) found that many IPPs were not sure who had responsibility for the delivery of particular components of the New Deal 'package'.

Although in a charity the trustees are ultimately responsible for the management and administration of their charity, and the trustees of a trust or an unincorporated association can be personally liable for a breach contract, less than 10% of responding IPPs said that their trustees had read the New Deal contracts before they were signed.

Legal Advice

Charities are increasingly becoming caught up in contracting with government to provide essential welfare services. As the complexity of their legal relations develops, it is important for charities to ensure that they are not putting their charitable assets and beneficiaries at risk when forming these contractual relationships. Charities should adopt a professional and cautious approach to their legal relations with other bodies. However, this is much easier said than done, especially for smaller charities, many of whom have no previous experience of being involved in such schemes, and have no expertise in dealing with the legal problems which can arise. In these circumstances, legal advice is essential. Yet, on a tight budget, charities often consider this to be beyond their means.

Only 18% of IPPs said that they had taken legal advice before entering into contracts. One IPP interviewed as part of the pilot study suggested that charities prefer to save their money, trusting that the other party to the contract will deal with them fairly because of their charitable status.

By comparison, VSO administrators within the UD's had each taken legal advice before becoming involved in New Deal. Two of them (Area 1 and Area 2) also recommended that IPPs do the same. Area 1 said that most of their IPPs had been involved in training contracts before and knew the type of things expected of them. They also usually already had legal advisers. Area 3 did not suggest that their IPPs take legal advice, but did not see this as a cause for concern as, in the view of the VSO administrator, IPPs could terminate their contract at any time if they had a problem. Upon examination of the Area 3 contract, there is no clause allowing for immediate termination. The only clause dealing with potential changes in circumstances allows for 'no alterations to job description or training of participant without consultation with placement co-ordinator and participant'. By contrast, the Area 1 contract, under the heading 'termination / breach' allows for termination at any time by either party giving one months notice and without the requirement for the giving of reasons. The contract then goes on to provide for the mode of transfer of responsibility upon termination, acknowledging that the needs of the *New Dealer* are of paramount importance on such occasions.

The VSO administrators' advice appears to have some effect upon the IPPs because in the two areas where it was recommended that legal advice should be sought, 29% and 33% of IPPs respectively took advice, whereas in Area 3, where it was not recommended, none of those who responded had taken independent advice.

PROBLEM AREAS

1. Funding

New Deal has a very complex and variable funding system. Funds are paid over to each UD by the regional ES office. The administrators of the various *Options* in each UD receive the money for those *Options*. For each *New Dealer* who is placed on to an *Option*, a sum of money is paid by ES to the administrator of that *Option*. Sometimes this money is paid in a lump sum, and sometimes it is paid in instalments.

Procedures vary between UDs. For example, in Area 1, the New Deal administrator received a lump sum from ES for every *New Dealer* that it received on to the *Option*. That sum is fixed, and the administrator does not receive any further funding for that young person, even if they restart their placement etc. However, in Area 3, payments from ES to the VSO administrator are made in instalments, linked to the *New Dealer's* progress.

Money is then passed down by the VSO administrator to the IPPs. Again, fee structures do vary between UDs, but usually receipt of fees is in some way conditional upon completion of paperwork by the IPP and payment is generally made in arrears. The placement fee, negotiated between IPPs and VSO administrators, is made up of four basic elements:

- 70% input related (20% when the *New Dealer* is first placed and 50% paid monthly in arrears to cover costs of supervision, materials, administration etc.);
- 20% value-added (related to progress linked to individual *New Dealer's* action plan);
- 10% output related (e.g. leaving for paid or self employment lasting for at least 3 months after completion); and,
- £750 for training provision, to be paid in three instalments (ES, 1998).

In Area 1, payments to IPPs are triggered by the return of attendance sheets, and further instalments will not be paid until paperwork has been received by the New Deal administrator. There is also a payment made for the return of a job outcome sheet. Area 3 also make payments every time that a completed timesheet is returned. Money is also available to IPPs in Area 3, in order to formalise their internal structures and put in place the necessary provisions, e.g. a new health and safety policy.

Various criticisms have been made of the New Deal funding structure. Whilst variations in fee levels are inevitable, there have been reports that some IPPs are not being paid at all by certain VSO administrators. For example, a study on the operation of the VSO in London found that only just over half (56%) of IPPs reported receiving any funding at all (Van Doorn and Pike, 1999). In theory, the funding from ES passed via the VSO administrators *should* cover all the costs incurred by the IPPs in the course of providing placements for New Deal. Each VSO administrator interviewed believed that on the whole the funding levels were sufficient and that expenses were being met. However, the IPPs told a different story, with many respondents believing that they have been unable to recoup all of the outlay that they have had to make providing placements. In Area 1, only 43% of those questioned agreed that they had been able to recoup their outlay, whereas, by comparison, in Area 2, 67% of respondents were satisfied that they had been able to recover what they had spent. This may be due to the fact that, in Area 2, each charity tendering to become an IPP

negotiates its own unit cost, so that those providing placements which are more expensive to run receive a higher unit cost to cover those expenses.

As ES is not a party to many contracts and sub-contracts, there is no insistence from ES on a minimum level of fees. In the model contract between the Secretary of State and an IPP the only clause pertaining to sub-contractors' fees obliges the administrators to pay promptly.

Other research confirms that charities are using their own voluntary income to resource the VSO. For example, the YMCA stated in its report on its involvement in New Deal (YMCA, 1999) that the funding structure did not accurately reflect the work undertaken. 70% of YMCA New Deal providers said that they did not receive sufficient funding. Two particular problems were highlighted: First, YMCAs were paid a single outcome fee, despite the fact that the *New Dealer* may need a range of services, often more than originally anticipated; Secondly, costs incurred for potential *New Dealers* who failed to materialise were not recoverable. The fact that in order to provide a worthwhile service to participants the organisation was having to commit time and resources over and above the levels expected of it in its contracts and for which it would receive no extra funding made it question whether the YMCA would be able to sustain its level of commitment to New Deal. Similarly, the Anglican Diocese of Liverpool estimated that ES funding was covering only 40% of the costs that it had incurred running placements (Board for Social Responsibility, 2000).

The fact that charities are not covering all their costs with funding from ES could pose problems for them if, by applying their own charitable funds to New Deal, they would be misapplying funds. This might occur if participating in the delivery of New Deal could not be said to fall within a charity's objects. Interestingly, it was those charities who felt they were not covering all their costs who had generally considered whether or not it would be necessary to alter their constitution before entering into a New Deal contract, with 40% of them answering that they had given this issue consideration. Those who felt that their costs of New Deal participation were reimbursed did not consider it at all.

A recurring theme in interviews with the IPPs as part of the pilot study was complaints about the amount of paperwork involved in New Deal delivery and its link with funding. One IPP commented that payment of fees is connected to fulfilling paperwork requirements rather than to the costs to the charity. This mirrors the results of the YMCA report where some YMCAs described New Deal as the most administratively complex programme that they had ever experienced (YMCA, 1999). After the Anglican Diocese of Liverpool withdrew from its contract to deliver New Deal, it commented 'radical simplification is required if organisations like ours are to be able to participate satisfactorily' (Board for Social Responsibility, 2000).

Another funds-related problem with the VSO has been that charities have not generally received the level of referrals that they had anticipated when they had submitted their New Deal bids. Just over half of IPP respondents stated that the fact that the number of *New Dealers* to be received on placements was not guaranteed caused problems. This is because IPPs only get paid when their services are used – no *New Dealers* means no money even if costs have been incurred to become 'ready' for *New Dealers*. This leads to charities using their own funding to support their New Deal activity. Other studies (e.g. YMCA, 1999) have also identified this as a problem.

2. Being 'Contract Ready'

Participating in New Deal may provide new challenges for some charities. Examples include the adoption of enhanced health and safety and equal opportunities policies, and increased insurance cover. There have been concerns that smaller charities, with limited capacity, might be excluded from New Deal participation, for failing to meet the finance and quality standards expected of IPPs.

The data reveals that just under 10% of IPP respondents felt it necessary to make alterations to their insurance cover, and only 5% made changes to their health and safety policy. It is comforting to learn, however, that these issues appear to have been carefully considered, with 77% of respondents stating that they carried out a risk assessment before entering into New Deal contracts. VSO administrators are insistent on charities having the correct policies in place. Each interviewee said that, as part of the tender process, they carry out thorough checks to make sure that charities understand what their responsibilities are, and that they ensure compliance. One administrator said that it 'sold' the idea to the charities as an opportunity to review their practices, rather than as a criticism of the way things were being conducted. For charities that are not fully compliant, the VSO administrators all offer help and advice on how to implement the necessary policies. Two of the three administrators interviewed stated that some of the charities in their UD had experienced problems in these areas. One said that they felt charities tendering to be IPPs sometimes did not appreciate the full implications of not having these policies in place.

3. Employment Issues

Involvement in New Deal raises a number of employment issues for any organisation, and for charities these can be particularly problematic. Public and private sector bodies will employ staff, will be familiar with the workings of employment legislation, and will have in place existing employment regimes. By comparison, many charities employ very few staff, and in some cases the workforce will be made up entirely of volunteers.

New Dealers choosing the VSO receive either a wage paid by the IPP or an allowance paid by the ES. Overall, wages were not very common. Assistance with travel costs was the main form of financial support given to *New Dealers*, with 64% of IPP respondents reimbursing travel costs. However, in Area 2, 83% of IPP respondents paid *New Dealers* a wage, not funded from the New Deal budget provided by ES, but from outside funding secured by the VSO administrator in the area. In Area 2, wages are paid at the rate of £127 per week. There is an ES preference for the VSO to be waged, making it as much like the real world of work as possible (ES, 1998). Nationally, such complementary funding has come from sources such as Single Regeneration Budget and European Social Fund. However, some charities are shying away from the idea of paying wages even where the VSO administrator is facilitating that system. The Anglican Diocese of Liverpool stated that, as ESF funding was available, it considered paying wages but, in its own words 'the administration seemed mind-blowing for us' (Board for Social Responsibility, 2000). There was a concern that this source of funding might dry up causing more problems for *New Dealers*. There were also concerns about the legal consequences of paying *New Dealers*.

The precise status of *New Dealers* within any organisation is unclear. However, on the subsidised employment option a *New Dealer* has an employment contract, albeit only short-

term, and the employer will deal with that person in the same way as with any other short-term employee. Within the VSO, where wages are not usually paid, it is not so clear. The boundaries are particularly blurred where the IPP is used to having volunteers on their staff. The VSO administrators interviewed remarked that there is a tendency among charities to see a *New Dealer* as an ‘extra pair of hands’ and to treat them in effect as another volunteer, rather than considering what the young person needs to get out of the placement. This reflects the results of earlier research (The Tavistock Institute, 1998). Administrators have monitoring systems in place to try to ensure that this does not occur, but it is an attitude that they have had to fight against, particularly with under-funded charities.

IPPs were asked whether they treated their *New Dealers* as employees or volunteers. 41% of them said they treated them as a volunteer. These figures varied somewhat in the different UDs:

- In Area 1, 83% of respondents said that they treated *New Dealers* as volunteers;
- In Area 2, only 17% claimed that this was the case; and,
- In Area 3, 50% did not treat *New Dealers* as employees.

It should, however, be noted that in Area 2, the VSO is run mainly as a waged option. This means that although the participant is still taking part in New Deal and so can only be with the charity for six months, and is still entitled to receive all the training elements of New Deal, they are technically an employee of the charity.

The confusion over the employment status of New Deal participants is the result of a lack of clear guidance and legislation. Whatever the belief of the charity, the *New Dealer* is probably an employee of the organisation and as such is entitled to employment protection legislation. So, for example, if a *New Dealer* is paid a wage, he or she is entitled to the national minimum wage. Even those not paid wages will fall within the protection surrounding limits on working time, and discrimination legislation.

Surprisingly, having *New Dealers* working alongside volunteers in charities does not appear to have created problems, with 86% of IPPs responding saying that *New Dealers* and volunteers worked well together.

4. Sickness Absence

A number of respondents raised as a problem the rigid manner with which a *New Dealer*'s absence as a result of sickness is dealt. Earlier research (Cartwright, 2000) provided a good example of this: A *New Dealer* was off sick following a miscarriage. Although the IPP charity was well aware of what had happened - one of its employees visited her at home - her absence was longer than the 10 days' sick leave allowed under New Deal. When she returned to her placement, she was told by ES that she had lost her place and would have to go back on to the *Gateway* stage of New Deal. After lengthy negotiations, some brinkmanship on the part of the VSO administrator and despite what the local ES contract team insisted, the regional ES office relented and the woman was allowed to continue her placement. This encounter appear to be in line with the findings of an earlier study (Van Doorn, A and Pike, 1999) where it was noted that contractors often receive conflicting information from the different levels of the ES. One IPP interviewed as part of the pilot study noted that there should be some room in the system to deal with this sort of situation. To stop and restart the *New Dealer* was considered costly, bureaucratic and somewhat futile.

Another IPP completing the questionnaire suggested that low retention rates were due to the problems associated with sickness absence.

5. Dumping Ground or Stepping Stone?

There is a view that all the 'best' *New Dealers* will be placed within the subsidised employment option, with the VSO getting, as one IPP put it, 'the dregs' (see, also, for example, Millar, 2000 who talks about a 'hierarchy of options'). When IPPs were asked whether they agreed that the VSO was seen as a 'sink option' by many *New Dealers*, whilst 45% of respondents disagreed, it is worrying to note that 40% of respondents agreed. Interviews with VSO administrators confirmed that besides those seeking a career in the voluntary sector, referrals to the VSO include the highly disadvantaged who required 'intensive support' and 'sheltered' work experience. If the funding does not reflect the additional support given to some *New Dealers*, for instance, in the provision of a second start-up fee for a person who has already started on another *Option*, then the VSO may well be subsidising ES's costs of running New Deal. One IPP responding to the questionnaire specifically noted that there is no (financial) recognition for the additional pastoral work that is often required to be undertaken.

IPPs should not be obliged to accept every *New Dealer* who has been referred to them. However, it seems that VSO administrators are being placed under pressure to accept mandatory referrals. These are usually those *New Dealers* who are 'hard cases'. For example, the YMCA report concluded that young people placed on the VSO are somewhat less motivated and comprise a larger share of mandatory referrals (YMCA, 1999). In areas where there are mandatory referrals, VSO administrators could be forced to find placements for *New Dealers* that nobody else wants to take. In theory, repeated failure to find a placement could lead to the termination of the contract. Such pressure can filter down onto IPPs that end up taking on resentful *New Dealers* who have little or no prospect of success in any of the other four *Options*. Some VSO administrators have found a partial way round this problem by identifying specific IPPs who have agreed to 'specialise' in mandatory referrals. As one understanding IPP put it, as a charity, it would be wrong to 'hand-pick' *New Dealers* so that, effectively, the charity would agree to take anyone who comes along and would try to do something for them. Here, placements are viewed as a chance for development and do indeed provide a stepping stone to employment. Since those subject to mandatory referrals are less likely to complete New Deal, providing places for them can result in the loss of the additional payments made when *New Dealers* reach target levels of training etc. The widespread fear in relation to mandatory referrals is that not only do they undermine the government's commitment to the independence of the sector (Home Office, 1998), but they could also result in the VSO becoming the 'sink option' and the (costly) option of last resort.

CONCLUSIONS

Charities clearly have a lot to offer New Deal. The charitable sector has demonstrated that it is able to rise to the challenge by offering diversity, quality, sensitivity and local connectivity to New Deal. These characteristics are well matched to New Deal's emphasis on the 'individual', whose personal needs and aspirations should be met where possible. This research found much evidence of the continuing commitment and enthusiasm of charities for New Deal and for helping young unemployed people.

Involvement in New Deal can also bring positive benefits to charities. For example, IPPs spoke about New Deal raising their profile and being a useful way of introducing a younger element to their charity. Many *New Dealers* are now aware of the range and diversity of the charitable sector and of the employment and career opportunities it offers. This is especially relevant when young volunteers may be thin on the ground. Involvement in New Deal can help to break down barriers, for example, when *New Dealers* are placed with IPPs whose work is concerned with mental health. Having *New Dealers* on board may also allow a charity to expand its services or its range of users.

At the same time, many policy makers have gained an enhanced appreciation of the social and economic importance of charities and their ability to make a major contribution to the development of partnership working and the social inclusion agenda.

However, involvement in New Deal is not all positive for charities, and many of the downsides arise as a result of the clash between the New Deal ideals and the particular characteristics of charities. New Deal is principally concerned with getting people into work and improving their long-term employability. This can conflict with what have been described as IPPs 'efforts to improve "human capital"' (Hasluck, June 2000). This research shows that this tension is particularly evident within the VSO, where charities tend to regard New Deal as being about 'experience not jobs'.

This clash of ideals becomes especially evident when it comes to funding. Contracts must benefit from simplicity and funding should be geared towards outputs that are relevant to what charities do best for *New Dealers* (providing 'experience not jobs') rather than crude job entry and training attainment measures. As one IPP complained 'there is no recognition of distance travelled as an outcome' if it does not lead to employment.

Funding mechanisms should recognise the cash-flow of charities that often have few reserves or other assets to underpin the financial risks of their involvement in New Deal. New Deal programmes, in contrast to their predecessors, are supposed to focus on 'the individual' and their needs. It is suggested that funding should also be tied to the needs of IPPs. The burden of risk from failure needs to be shared more equally between ES, VSO administrators and IPPs. Charity IPPs often face failure; *New Dealers* who succeed are often those who have chosen the VSO from the outset, hoping that it would benefit their development. Unfortunately, there are many other *New Dealers* for whom this is not really an 'option' – these are the ones who struggle most and are most challenging for charities. There is a balance to be struck between using the VSO as a real option for those with relevant career aspirations who seek their skills and training through charities, and the inevitable role of charities to provide placements for those vulnerable young people, often

facing multiple barriers to employment, for whom a more 'sheltered' exposure to the real world of work seems appropriate. All charities, especially those operating in the latter category, must be sure that their involvement in New Deal is a core function of their charity so that they can legitimately 'go the extra mile' and provide support over and above what they are paid to do.

This leads to the conclusion that charities should give real consideration to whether this sort of delivery role is the 'right' sort of activity for them to take part in. The answer should be that charities should get involved only when there is benefit to them (and their charitable objects). Developing bids and proposals connected with New Deal is time-consuming and should take second priority to service delivery and maintaining core funding. Once charities are involved in New Deal delivery, many find it difficult to cope with the administrative and financial demands of the New Deal bureaucracy. This research found that 68% of IPP respondents felt that New Deal had taken more time to run than expected. Almost one third felt that their involvement in New Deal had put some pressure on the ability of the organisation to pursue its core charitable objectives, with 5% describing this as a 'great pressure'. The best advice came from one IPP respondent who issued the warning that it would think carefully before taking on another New Dealer due to the heavy demands that it places on a small staff team.

BIBLIOGRAPHY

Atkinson, J, *The New Deal for Young Unemployed People: A Summary of Progress*, 1999, Sheffield: Employment Service (ESR13).

Board for Social Responsibility, *New Deal and the Diocese*, 2000, Liverpool: Church of England.

Cartwright, A, "Charities and the 'New Deal'" *New Law Journal* Vol 150 No 6938 2000: 821.

Cartwright, A and Morris, D, "Charities and the 'New Deal': Compact relations?" *Journal of Social Welfare and Family Law* 23(1) 2001: 65-78.

Dewson, S and Eccles, J, *The New Deal for Young Unemployed People*, 2000, London: NCVO.

Employment Service, *Fact sheet, New Deal for young people: Work in the Voluntary Sector Option. Information for Providers* (ND fact 2 PP3/32457/298/54) January 1998
(http://www.thesite.org/newdeal/newdeal_info/pdf/02.pdf)

Grice, R, *Co-operation, Participation and Complexity: Local Partnerships and Public Policy*, 2000, London: NCVO.

Hasluck, C, *Early Lessons from the Evaluation of New Deal Programmes*, June 2000, Sheffield: Employment Service (ESR49).

Hasluck, C, *The New Deal for Young People, Two Years On*, February 2000, Sheffield: Employment Service (ESR41).

Home Office, *Getting it Right Together. Compact on relations between Government and the Voluntary Sector in England*, 1998, Cm 4100, London: Home Office.

Millar, J, *Keeping track of welfare reform – The New Deal programmes*, 2000, York: Joseph Rowntree Foundation.

NCVO, *Partnerships for the New Deal: playing an active role*, 1997, London: NCVO.

NCVO, *The New Deal for young unemployed people, Members briefing*, 1997, London: NCVO.

NCVO, *The New Deal for young unemployed people, Summary of conference proceedings*, 1997, London: NCVO.

NCVO, *Voluntary Sector Involvement in the New Deal Pathfinder Areas*, 1998, London: NCVO.

New Deal Press Notice, *Government Hits New Deal Manifesto Target*, 30 November 2000.

The Prince's Trust, *What Works? Young People and Employers on the New Deal*, 1999, London: Employment Policy Institute.

The Tavistock Institute, *New Deal for Young Unemployed People: Case Studies of Delivery and Impact in Pathfinder Areas*, 1998, Sheffield: Employment Service (ESR7).

The Tavistock Institute, *New Deal for Young Unemployed People: National Case Studies of Delivery and Impact*, 1999, Sheffield: Employment Service (ESR30).

Van Doorn, A and Pike, J, *Third Sector Third Option? Experiences of the New Deal Voluntary Sector option in Greater London*, 1999, London: Unemployment Unit and Youthaid.

YMCA, *Going the extra mile, YMCAs and the New Deal*, 1999, London: YMCA.

Woodfield, K, Bruce, S, and Ritchie, J, *New Deal for Young People: The National Options*, 2000, Sheffield: Employment Service (ESR37).