

CHARITIES AND THE NEW DEAL: CHALLENGES FOR THE FUTURE

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Introduction

There is little doubt that the New Deal for Young People has been a success since its introduction in April 1998.² It has already surpassed its target of helping 250,000 young people back to work.³ The scheme was rapidly followed by other New Deal programmes including New Deal for the Long-term Unemployed, New Deal for Lone Parents and New Deal for Disabled People. As recently as November 2001, together with the announcement that further measures to increase the effectiveness of New Deal were to be introduced, New Deal was described as 'central to the Government's Welfare to Work strategy for the long-term unemployed'.⁴ So, the New Deal is delivering, and the voluntary sector is playing an important part in it.

This article summarises the findings from recent research⁵ undertaken to look at the role played by charities in the New Deal for Young People through their involvement in the delivery of the Voluntary Sector Option (VSO).⁶

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² New Deal was launched in 12 Pathfinder areas in January 1998, then rolled out nationally in April 1998.

³ New Deal Press Notice, *Government Hits New Deal Manifesto Target*, 30 November 2000.

⁴ HM Treasury, *Pre-Budget Report*, 27 November 2001.

⁵ The research was supported by a scholarship from the Charity Law Association.

⁶ The full research report, Morris, D, *Charities and the New Deal for Young People*, 2001, Liverpool: Charity Law Unit, is available to download from the Charity Law Unit's website: <http://www.liv.ac.uk/law/units/clu.htm>.

Outline of the Programme

The New Deal for Young People provides advice and training for 18-24 year olds who have been claiming Job Seekers Allowance (JSA) for more than six months. Like the Jobplan workshop, Restart course and other training schemes before it, participation is obligatory for all those who are eligible. Failure to participate without good cause will result in benefits sanctions being imposed.

New Deal offers a range of options to help young people find work. Each claimant (hereafter termed New Dealer) is assigned a Personal Advisor, usually from the Employment Service (ES), whose role is to help them work out what they want to do, and to identify training needs and the most suitable way to meet those needs. If full-time unsubsidised work cannot be found during the initial stage ('Gateway'), the New Dealer is offered one of five options that will, in theory, increase his or her employability. The Employment Option is the first option, where a New Dealer is placed with an employer for six months. Employers receive a subsidy that they are expected to top up so as to pay the 'going rate'. In addition, they have to ensure that at least one day a week is spent in relevant training. Secondly, a New Dealer can choose the Self-employment Option where they receive training, grants and business support to help them to set up their own business. A third option is to work in the voluntary sector for six months, during which time the New Dealer receives a small sum on top of JSA and a training allowance. Fourthly, there is the Environmental Task Force Option (ETF) which, in organisational terms, is similar to the Voluntary Sector Option (VSO) and finally, those who have few or no qualifications can opt to go to college for courses lasting up to one year.

Each option is designed to provide high quality training and, wherever possible, to ensure that the New Dealer receives the 'going rate' for the work that they do. On the ETF and the VSO, service providers are encouraged to supplement the New Dealer's set income with money from other sources such as the Single Regeneration Budget, the European Social Fund or other public funds.

New Deal is arranged locally in each area (termed a unit of delivery, of which there are 142 in total). In each unit of delivery local employers, local authorities, training providers, local enterprise companies, Job Centres, 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 area has adopted its own administrative regime to deliver New Deal, making it difficult to describe (or indeed discover) exactly how provision is made in any particular area. Ordinarily, within each area, each option has an option administrator, who co-ordinates provision for that option. In some areas, 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, it is possible for ES to administer New Deal itself within an area so that there is a direct relationship between ES and placement providers.

Charities and the New Deal

Charities are involved in New Deal at various stages. They may take part in the initial drawing up of a local strategy plan in any given area, providing information about the local employment needs, the local young unemployed and any particular obstacles. Some charities have become involved in the administration of the VSO. As this usually involves fairly substantial responsibilities and liabilities, it is taken up by larger charity representatives, such as the local Council for Voluntary Service. The majority of charities that are involved in New Deal provide the placements that make up the VSO.

Under the VSO, 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 'passported' 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 charity providing the placement.

The Research

The aim of the research 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.⁷ The research was carried out by way of face to face interviews with VSO administrators as well as postal questionnaires to individual placement providers in four areas where New Deal is delivered using different administrative regimes.⁸ In

⁷ A small local study of charities' involvement in New Deal has already been undertaken by members of the Charity Law Unit. See Cartwright, A and Morris, D, "Charities and the 'New Deal': Compact relations?" 2001 *Journal of Social Welfare and Family Law* 65. Whilst the original research was largely theoretical, this research aimed to back up those conclusions with empirical evidence.

⁸ For full details of the methodology adopted see Morris, D, *Charities and the New Deal for Young People*, 2001, Liverpool: Charity Law Unit.

addition, the New Deal contracts, which form the basis of the relations between charity placement providers and those running the VSO, were examined in each area.

Findings

The 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, New Deal raises the profile of participating charities and can provide 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.⁹ Involvement in New Deal can help to break down barriers, for example, when New Dealers are placed with mental health charities. Having New Dealers on board (when properly funded) may also allow a charity to expand its services or its range of users.

In addition, 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.

While New Deal has brought many positive elements to the charitable sector it has also provided challenges.

1 Funding

The complex and varied funding structures in operation for New Deal¹⁰ may mean that charities are using their own charitable resources to fund their involvement in New Deal.

A basic reason for funding deficiencies is that often the funding structure does not accurately reflect the work undertaken by charities. In theory, the funding from ES passed via the VSO administrators *should* cover all the costs incurred by charities

⁹ See, for example, the 1997 National Survey of Volunteering, which found a 'sharp reduction in levels of participation by young people aged 18-24'. Davis Smith, J, *The 1997 National Survey of Volunteering*, 1998, London: National Centre for Volunteering.

¹⁰ For further details see, Morris, D, *Charities and the New Deal for Young People*, 2001, Liverpool: Charity Law Unit.

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 individual charities 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.

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 Deal¹¹ that the funding structure did not accurately reflect the work undertaken. Two-thirds of the 39 YMCAs consulted believed that their participation was insufficiently funded. Similarly, the Anglican Diocese of Liverpool estimated that ES funding was covering only 40% of the costs that it had incurred running placements.¹²

This is partly due to the fact that charities find that the young people who are placed on the VSO require 'extra support', which charities are able to provide, but not without cost. Interviews with VSO administrators confirmed that besides those seeking a career in the voluntary sector, referrals to the VSO include the highly disadvantaged. 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. The YMCA report confirmed that the VSO was home to many hard cases, those with debt problems, unused to work, lacking qualifications or just very poorly motivated.¹³ Similarly, research by the Tavistock Institute found that New Dealers on the VSO include those who require 'intensive support' and 'sheltered' work experience.¹⁴ While bodies like the YMCA do not deny that they have the skills to provide such support, they objected to having to go the extra mile, as they put it, without financial compensation.

Another reason found for funding deficiencies is the amount of paperwork involved in New Deal delivery and its link with funding. This mirrors the results of the YMCA report where some YMCAs described New Deal as the most

¹¹ YMCA, *Going the extra mile, YMCAs and the New Deal*, 1999, London: YMCA.

¹² Board for Social Responsibility, *New Deal and the Diocese*, 2000, Liverpool: Church of England.

¹³ YMCA, *Going the extra mile, YMCAs and the New Deal*, 1999, London: YMCA.

¹⁴ Evaluation Development and Review Unit, *New Deal for Young Unemployed People: Case Studies of Delivery and Impact in Pathfinder Areas*, 1998, London: Employment Service.

administratively complex programme that they had ever experienced.¹⁵ After the Anglican Diocese of Liverpool withdrew from its contract to deliver New Deal, it commented that 'radical simplification is required if organisations like ours are to be able to participate satisfactorily'.¹⁶ A survey of the experience of VSO delivery during the first 18 months of New Deal in London found that administrative demands on VSO administrators were onerous and time consuming. Contractors estimated that around 90% of their time was devoted to paperwork.¹⁷

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.

2 Local Flexibility/Obscure Legal Authority

A striking feature of New Deal contracts is their local variation, which, in turn, impacts disparately upon charities' resources and their ability to pursue their core charitable purposes. 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. Also, continuous improvement to the programme means that New Deal is subject to constant change and evolution.

Whilst this flexibility in relation to delivery methods can create fruitful partnerships between public, private and voluntary sectors, its complexity raises problems and ambiguities which may transfer part of the costs of compliance to the participants themselves. If these are charities, it can lead to both an unnecessary use of charitable funds as well as unacceptable exposure to liability.

¹⁵ YMCA, *Going the extra mile, YMCAs and the New Deal*, 1999, London: YMCA.

¹⁶ Board for Social Responsibility, *New Deal and the Diocese*, 2000, Liverpool: Church of England.

¹⁷ 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.

An added problem for charities is the obscurity of the law governing New Deal and similar programmes. It has little statutory underpinning¹⁸ and is a good illustration of what Freedland calls 'leaflet law'.¹⁹ He used this to describe the legal basis for the Youth Training Scheme of the 1980s. Legal authority for the scheme was spread-out in diverse statutory instruments, ministerial statements and departmental guidelines, and we see a similar pattern with New Deal. For Freedland, leaflet law is not a welcome development, with the scattering of legal authority undermining accountability and making it more difficult to provide independent advice. For charities, therefore, the obscure legal authority of New Deal can sometimes make it difficult to identify precisely where their liabilities lie.

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.

3 Contractual Burdens

When asked about the burden of contracts, mixed messages were received. VSO administrators who were interviewed felt that contracts did not place any undue burden on the charity placement providers in their area. However, more than two thirds of the individual charities who responded felt that complying with the contracts was onerous. More than half admitted that they were not confident that they understood the extent to which they 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 research²⁰ where the universal experience of

¹⁸ The primary authority for New Deal is the Employment and Training Act 1973, s.2, which authorises the Secretary of State to 'make such arrangements as he considers appropriate for the purpose of assisting persons to select, train for, obtain and retain employment suitable for their ages and capacities'. Many of the financial aspects of New Deal adopt the framework established by the Jobseekers Act 1995 and subsequent regulations.

¹⁹ Freedland, M, "Leaflet Law and Labour Law: the Youth Training Scheme of 1983" 1983 *Industrial Law Journal* 220.

²⁰ NCVO, *Voluntary Sector Involvement in the New Deal Pathfinder Areas*, 1998, London: NCVO.

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 London²¹ found that many charities were not sure who had responsibility for the delivery of particular components of the New Deal 'package'.

The precise degree to which a charity providing a placement is 'exposed' to potential claims varies according to local delivery method. For example, earlier research²² identified one New Deal contract where individual charities providing placements could be made responsible through indemnity clauses for loss or damage caused other than by their own acts or omissions. This is of great concern when it is borne in mind that both New Dealers *and* the charity beneficiaries with whom they are working may be vulnerable persons, where the chance of some form of damage being caused is quite high.

Whilst charity 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 of contract, it was found that less than 10% of charities responding said that their trustees had read the New Deal contracts before they were signed.

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. Nevertheless, the research found that the majority of charities are entering into contracts to deliver New Deal without the benefit of legal advice.

4 Employment Status

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 should deal with that person in the same way as with any other short-term employee. Within the VSO, where wages are not usually paid,²³ it is less clear. The boundaries are particularly blurred where the charity is

²¹ 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.

²² See Cartwright, A and Morris, D, "Charities and the 'New Deal': Compact relations?" 2001 *Journal of Social Welfare and Family Law* 65.

²³ Within the research, wages were not very common, assistance with travel costs being the main form of financial support given to New Dealers.

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.

Where the VSO is run as a waged option, although participants are still taking part in New Deal and are only employed for six months, they are still entitled to receive all the training elements of New Deal, whilst they are technically employees 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.

Recommendations

The key recommendations from the research include:

- 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;
- 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.

Concluding Remarks

The government's enthusiasm for drawing upon the skills and experiences of the voluntary sector in implementing its policies is not diminishing.²⁴ It is therefore all the more important that funding issues are resolved. Many charities are currently not able to participate in programmes such as New Deal as they represent too much of a financial risk. In the pre-budget report of November 2001²⁵ the government acknowledged that, for a small number of New Dealers who experience multiple barriers to work, further assistance is needed to enable them to compete effectively in the open labour market.²⁶ This new development should be accompanied by a clear recognition of the extra work (and costs) that charities devote to helping these 'hardest to help' groups who are placed with them. Without this acknowledgment, there is a chance that the VSO may well end up as the 'sink option' or 'last chance saloon'²⁷ for young people that the private sector does not want and will not support.

Where the VSO is currently working well for charities, this often reflects the support given by the other contracting partners, particularly those who have a sound working knowledge of the sector. Due to local variability, it is very much a game of chance for charities as to who their New Deal contracting partners (and what their New Deal experience) will be.

²⁴ See, for example, the recent announcement of the Chief Secretary, Andrew Smith, that, as part of the Spending Review 2002, a cross cutting review of the role of the voluntary sector in service delivery is being undertaken. The overall objective is to explore how government can work more effectively with the voluntary sector to deliver high quality services. For further details see, HM Treasury, *Cross Cutting Review of the Role of the Voluntary Sector in Service Delivery Update* 30 October 2001.

²⁵ HM Treasury, Pre-Budget Report, 27 November 2001.

²⁶ StepUP, to be piloted in April 2002, is designed for those who have not been able to secure a full-time job after a New Deal programme and require more intensive support to make the move to unsupported employment.

²⁷ 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.