

vpolicy

**A response from v to the DBERR (DTI)
consultation on the National Minimum
Wage and voluntary workers**

September 3 2007

About v

v is the charity launched in May 2006 to champion youth volunteering in England through the implementation of recommendations set out in the Russell Commission and accepted in full by the Government. Our key objective is to create a significant and lasting change in the quality, quantity and diversity of youth volunteering opportunities.

v was established to build on the excellent work already being undertaken in the youth volunteering sector, both in terms of creating new and additional opportunities, and by extending the reach of existing opportunities to those young people who have not previously volunteered.

Background

v welcomes this opportunity to respond to this important consultation on the National Minimum Wage and voluntary workers and recognises the positive intention of the consultation which would allow Russell Commission recommendations to be implemented in full.

This consultation is particularly relevant to two of the Russell recommendations, one of which is being taken forward by v (recommendation 7) and the other by the Office of the Third Sector (recommendation 12):

Recommendation 7

That there should be up to 12,000 full-time volunteering opportunities per annum delivered within the first five years of the framework and that the full-time programme should feature:

- A weekly living allowance of around £60 to cover travel and subsistence costs
- Contribution towards accommodation costs for all volunteers living away from home
- An education partner for those full-time volunteers who wish to link their activity to a qualification, or towards a Youth Achievement Award
- Young volunteers who lead, develop and deliver and recruit for projects involving part-time and short-term volunteers

Recommendation 7

Young people in benefits, and their families, should not suffer a financial barrier when they volunteer. To make it easier for young people on benefits to volunteer:

- A rulebook should be published by the Department for Work and Pensions to communicate existing rules more effectively to staff in Jobcentre Plus, and for interested parties such as volunteer involving organisations and local authorities, with a short summary guide to be widely distributed for volunteer involving organisations and young volunteers
- The implementation body should make available a discretionary fund that providers of full-time opportunities in the framework could access for individual cases of hardship due to housing costs, loss of family benefits or childcare costs
- Government should consider looking at the general Housing Benefit interactions for volunteers within its current review of Housing Benefit as a whole
- Within its wider Review of Financial Support for 16-19 year olds, government should extend the same entitlements received by those in education or training to those who engage in full-time volunteering opportunities

Executive Summary

v strongly believes that in order to implement Russell Commission recommendations in full, and in particular to widen access to volunteering amongst those young people who may be disadvantaged and in receipt of benefits, there is a need for wider interpretation of some of the terms used in section 44 of the 1998 National Minimum Wage Act.

However, we urge against any change which may cause confusion in the sector and which is not joined up with DWP policy. Any amendment to the regulations would therefore need to be:

- (a) applicable to the sector as a whole in England, and not restricted in any way to those projects funded through the National Youth Volunteering Programme; and
- (b) applicable to all young volunteers in England, not solely those undertaking formal accreditation or qualifications as part of their opportunity

We look forward to a joined-up solution, across Government departments, which will work in favour of young people and the volunteering sector as a whole.

If you have any questions regarding our response, please contact:

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Consultation Questions

1. Do you have any general observations or comments to make about the way in which section 44 of the Act has operated in practice?

- 1.1** Whilst Russell originally recommended an allowance of around £60 for full-time young volunteers, it soon became clear to us that this was actually creating additional financial barriers for young volunteers, particularly where the £60 volunteering allowance directly impacted on the entitlements of young people claiming state benefits (e.g. withdrawal of housing and other passported benefits). Projects also expressed concerns regarding the potential links between the £60 allowance, NMW legislation and employment law.

Following consultation with v-funded providers, guidance was issued in June 2007, recommending ways to administer their full-time programmes in order to comply with current employment legislation. This guidance recommended an allowance of up to £60 covering only travel, subsistence and any other expenses directly relating to the volunteering placement, and advised that this be calculated against actual receipts.

- 1.2** v is clear that volunteering is any non-compulsory activity which involves spending time, unpaid, doing something which is of benefit to others (excluding relatives), society or the environment. We therefore believe that the general approach of section 44 is correct and we do not advocate the payment of financial incentives or of allowances that do not directly relate to 'reasonably estimated' expenses. However, there are three persistent issues for consideration, one regarding administration and the other two regarding access.

- 1.3** Firstly, the current regulations are overly-bureaucratic and v would like to see the administrative burden (collecting receipts etc) reduced on our full-time providers. We also believe that it is inappropriate and insensitive to expect a young person who may be struggling financially, to make payments that will then be reimbursed at a later date.

Changing practice may not necessarily require an exemption from the Act or even legislative change and v is urging DBERR to discuss with the DWP, whether or not it might be acceptable for providers to offer young people an up-front allowance (as proposed in Russell recommendation 7) based on 'reasonably estimated' expenses.

- 1.4** Secondly, our consultation with full-time volunteering providers earlier in 2007 revealed that even where organisations were doing all required of them within the law, they were still coming up against problems at a local level. Consequently, v has been working with the Office of the Third Sector (OTS) to ensure greater consistency in practice amongst Job Centre Plus staff. In 2006, the DWP issued a revised guide to volunteering whilst on benefits which sought to clarify the position of volunteers. However, much more work still needs to be done in this area, and in particular v would like to highlight the following issues:

- i) That any payment of expenses that directly relate to participation in a volunteering opportunity should not be counted as 'earnings' and should therefore be disregarded in relation to income tax, National Insurance contributions, and in determining eligibility for other benefits
- ii) That a young person participating in a full-time volunteering opportunity who finds themselves applying for benefits, should be able for a limited time to receive Income Support (soon to become the Employment & Support allowance) rather than JSA, in order to continue with their placement until completion
- iii) That there should be a more strategic discussion about how funded full-time volunteering opportunities interact with the newly proposed approach to JSA and in particular, those options available to young people through the flexible New Deal

We are aware that there is currently work underway as part of the Independent Living Review to tackle some of the benefit barriers to involvement in civic life, and we urge DWP to use this as an opportunity to consider the wider impact of benefits policy on participation, including volunteering.

1.5 Thirdly, v would like to see section 44 interpreted in such a way as to recognise the childcare costs of lone parents as a legitimate expense incurred in the performance of duties. Volunteering should be regarded as a stepping stone back into work for lone parents and v therefore believes that this financial support should be offered for a time-limited period.

2. Do you have any comments about the proposal to use section 3 of the Act to exclude from the national minimum wage those who participate in schemes that are supported under the national framework recommended by the Russell Commission for those in the 16-25 age group?

2.1 Exemption from the National Minimum Wage would appear to offer one half of a solution to those organisations and young volunteers operating in circumstances outlined above and would certainly remove one of the financial barriers affecting full-time volunteers.

2.2 Aside from the DWP issues, an exemption would have to be written very carefully and v is not sure that it would be possible to frame an exemption in a satisfactory way. This issue is particularly complex as policy on volunteering is devolved; therefore implementation of Russell Commission recommendations looks very different in England to models and approaches adopted in Scotland, Wales or Northern Ireland. It would therefore be helpful, in moving forward, if there was no further reference to 'the national framework', a phrase which could cause confusion.

2.3 In England, v is creating a strategic framework for youth action and engagement, encompassing a wide range of short-term, part-time and full-time volunteering opportunities. In contrast to *ProjectScotland* we are not a direct delivery agency and instead, we are working through a wide range of organisations in the voluntary sector to build on existing good practice and fund the creation of new

and exciting youth volunteering opportunities. With this approach in mind, it is essential that any amendment to the regulations would be applicable to the sector as a whole and not solely those projects that are funded by v.

2.4 One possible way of moving forward could be to clearly set out the criteria that third sector organisations would have to meet in order to qualify for an exemption. v would be interested in progressing this discussion but we will not, under any circumstance, be seeking to assume any power for regulating the sector. Any opportunities for exemption would have to be time-bound placements with third sector organisations but beyond this, it is difficult to provide any further clarity.

2.5 The rationale behind other exemptions for particular government-backed schemes such as Apprenticeships or *Entry to Employment*, is that there is a clear educational or training benefit for the young person which justifies an exemption. However, whilst young people who participate in full-time volunteering will often benefit in a number of ways (e.g. development of new skills, improvements in self-confidence, preparation for work etc...), we would not be able to guarantee such a 'benefit' in measurable terms and believe that accreditation should remain optional. Moreover, re-casting volunteering as 'training' could result in further difficulties for young people in receipt of benefits, and moves away from the notion of volunteering as a valuable activity in its own right.

2.6 If a future programme of national community service (or civil engagement) was developed for school-leavers, offering young people financial payment over and above that described in section 44, then it may then be necessary to amend the regulations to accommodate that defined programme. However, no such programme was recommended by the Russell Commission and it is questionable as to whether or not such a scheme could be accurately described as 'voluntary'.

3. If the national framework were to be extended at a future stage to those who have attained the age of 26, do you consider that the descriptions in section 3(1A) cover all relevant activities? If section 3(1A) is not broad enough, can you indicate what kind of description would cover the activities that should be included, and what those activities are?

3.1 v's remit is to engage 16-25 year-olds in volunteering and we are therefore particularly focused on the participation of young people. Having said that, 'youth volunteering' does not operate in a vacuum and we are interested in exploring, with the Commission on the Future of Volunteering, ways in which the Russell Commission recommendations can be joined up with any future developments targeting other age-groups. Also, there is a lack of consensus about what constitutes a 'young person,' (e.g. the Prince's Trust defines young people as those aged 14 – 30), thus creating difficulties in consistent application of this policy.

3.2 With this in mind, we believe that any exemption from the National Minimum Wage (NMW) should also be applicable to those who have attained the age of 26. The current description of activities under section 3(1A) is not broad enough to encompass a wide range of volunteering opportunities and would therefore have to be amended (to fit in with any new criteria as discussed above).

4. Are there any other circumstances where the position of volunteers or voluntary workers should be similarly clarified (i.e. apart from the national framework recommended by the Russell Commission)? If so, what are they?

4.1 As already stated, an exemption would have to encompass all full-time volunteering opportunities meeting a set of Government endorsed criteria.

5. Do you have any views about the need for alternative action to deal with any difficulties that you consider arise for the third sector as a consequence of the Act? If so, what are the difficulties and what alternative action would you suggest?

5.1 This has already been addressed above – an alternative to amending regulation 12 of the Act would be to interpret the current legislation more widely or to amend the Act (see below).

6. Do you consider that there are difficulties of such significance facing the third sector that section 44 of the Act needs to be amended to introduce a new power to enable changes to be made to the types of organisations that could become qualifying organisations and/or the boundaries of permitted monetary payments or benefits in kind? If so, please specify the difficulties, the types of organisation that should be included and where the boundaries should lie.

6.1 If it is neither possible to interpret section 44 more widely (as suggested above) nor satisfactorily amend regulation 12, then section 44 may need to be amended to alter the boundaries of permitted monetary payments or benefits in kind.

6.2 There could also be a need for clarification on the types of third sector organisations covered by section 44 and the definition of ‘voluntary organisation’. For example, social enterprises have been eligible to apply for funding through v’s National Youth Volunteering Programme (NYVP) and any regulation on the NMW should apply equally to those third sector organisations with charitable objectives (even if they are not registered charities).

7. Do you have any comments about the position of CFAVs?

7.1 v cannot provide substantial comment on the position of Cadet Force Adult Volunteers (CFAVs) but if DBERR was to establish an exemption from the NMW based on a set of criteria (as outlined previously), we would expect the criteria to cover organisations such as the CFAVs.