

The bare minimum

Lucy McLynn and Victoria Cook provide an update on the minimum wage and voluntary workers

THE GOVERNMENT'S response to the consultation on the national minimum wage (NMW) and voluntary workers was published on 27 November 2007. The consultation was aimed at reviewing the operation of section 44 of the National Minimum Wage Act, which provides exemptions to charities and voluntary organisations from having to pay the minimum wage to voluntary workers in particular circumstances. These are where the voluntary worker receives no remuneration except actual out-of-pocket expenses or a reasonable pre-estimate of expenses, and no benefits in kind other than subsistence or accommodation, or they also receive a monetary payment for subsistence, in circumstances where they are provided to do work for a voluntary organisation through arrangements made with another voluntary organisation. The trigger for this consultation was the number of new volunteering agreements being entered in to with volunteers provided through v and Project Scotland – schemes developed as part of the Russell Commission's national framework for youth volunteering.

The response to the consultation was, to say the least, disappointing. The government concluded that the NMW exemptions were operating well, and that no changes were required. The reality, however, is that there are a number of problem areas, which cause genuine concern to charities using voluntary workers.

For example the NMW exemption does not allow for

benefits in kind of any description other than the provision of subsistence or accommodation. Charities are therefore unable to provide onsite childcare to voluntary workers. Lack of childcare is, obviously, likely to prevent a significant number of parents from becoming volunteer workers.

Similarly, training amounts to an impermissible benefit in kind unless it is training which the voluntary worker necessarily undertakes in the course of the work or which is provided for the sole or main purpose of improving the worker's ability to perform the particular work. Providing general skills training is something that voluntary organisations often wish to do (particularly as it can often be done at low or no cost) and this offers great benefit to the individual undertaking the work. This is not possible, however, as the law stands.

Under the present regime, voluntary workers cannot receive reimbursement for organising their own accommodation. This can create particular difficulties with voluntary workers placed overseas, where it would be much more convenient for them to make their own arrangements.

In more general terms, there is a lack of clarity about what constitutes expenses, whether a charity is permitted to provide both accommodation and subsistence, and why there is a confusing and seemingly arbitrary distinction between voluntary workers placed with a charity by another charity and any other kind of volunteer.

All of these issues were raised in response to the consultation. We do not agree with the government's conclusion that this legislation is fulfilling the purpose for which it was enacted. If potential voluntary workers are deterred from offering

their services because of childcare difficulties, or because they need to focus on acquiring training with a view to future paid employment, then this does a great disservice to the sector, and to those individuals. The government may state that it does not wish to alter the nature of voluntary work by providing such significant benefits in kind, but it is hard to see how this is consistent with its policy of increasing the number of voluntary workers in the UK – the very policy which is behind the national framework for youth volunteering. A wider and yet precise scope for voluntary organisations to provide benefits in kind and certain monetary payments, for example, for accommodation, could only have furthered this objective.

The government has promised to prepare new guidance this year which may provide clarification of some of the general points raised in consultation, in particular what can be deemed to fall within expenses. Obviously, however, no amount of guidance is going to alter the fundamental principles of how the exemptions operate. Charities will therefore need to continue to exercise a great deal of care in the arrangements that they enter into with all volunteers, including those taken on through Project Scotland or v, to ensure that they do not inadvertently fall outside the scope of the NMW exemptions. In particular, it remains essential to ensure that benefits in kind are kept within the limited parameters ie. no non-essential training, no childcare, and that monetary payments are never made to voluntary workers except to reimburse expenses, or for subsistence in a three party arrangement. ■

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