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# The Benefits of CORN

Rewarding Participation: a legal paper  
by Allan Norman  
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and Sarah Hayes

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# **PREFACE**

## **Introduction:**

This legal paper was commissioned by Birmingham Money Advice and Grants (B-MAG). The paper provides a legal analysis in connection with social security legislation and the law relating to charitable trusts. These two areas of legislation will impact directly on the CORN project developed by B-MAG. The CORN project aims to reward the participation of individuals and households that actively participate in community regeneration. The impact of social security legislation is self-evident when large proportions of households in regeneration areas are dependent on means tested benefits. Trust law is also significant as the CORN project intends to deliver rewards to households that establish a need for a specific item. The item is then provided by a charitable trust established for the purposes of meeting such need for beneficiaries of the trust. The CORN project was originally designed for the New Deal in the Community (NDC) on 3 Estates in the Kings Norton area of Birmingham. The NDC also provided funds for this current legal paper on the impact of delivering CORN. At the time of writing we still seek support towards delivering the integrated rewarding participation model envisaged in the original papers.

## **Community Involvement:**

Community involvement and leadership is now the standard byword of all public policy designed to foster regeneration and inclusion. In dedicated programmes such as Sure Start, NDC and SRB community involvement is presented as compulsory mantra. At the heart of the Best Value challenge to public services is the need to prove the existence of effective consultation and on-going involvement of users. Those who live with the effect of public policy and the service delivery it produces will identify priorities, deliver and sustain services of the highest quality. The promise of community leadership has as its most magnificent aim a new dawn of community governance and the renewal of local democracy.

Yet five years in to the new agenda of “community led” regeneration there are many communities who see little difference in the power of traditional stakeholders. These stakeholders among them individual local or national government officers, public service cultures gate-keeping resources, local political fiefdoms where a council has almost as much

chance of changing hands as those in non-democratic societies. The cultures of conservatism remain the dominant networks of power.

The need to challenge these cultures through genuine community governance cannot be over emphasised. The Index of Multiple Deprivation (IMD) developed by the Department of Social Policy and Social Work at Oxford University confirms again the full extent of the failures of our democratic affairs. The IMD data shows that nearly 14.4m of our fellow citizens live in 2524 wards ranked by IMD in the most deprived 30% of wards, 29% of the total population of England, in these wards 38% of residents are reliant on means tested benefits, 54% of children live in families that claim means tested benefits. These are significant parts of our nation where our fellow citizens endure the most appalling life conditions in respect to health, education, crime, unemployment, housing conditions and grinding poverty. The link between individual and community is broken; few who live in these areas hold out hope for improvement.

## **Rewarding Participation the Key to Community Involvement:**

The prime minister has described social capital as a magical ingredient that decides between social breakdown and cohesion. The aim of rewarding participation is in the first instance to recreate trust between the community, its constituent groups and stakeholders from institutional settings. Part of the answer is emerging from the National Strategy for Neighbourhood Renewal. The emphasis on the third sector (the voluntary and community sector) as the delivery agent is most welcome.

In practice traditional stakeholders in regeneration have simply set up their own allegedly community voluntary sector organisations or compelled pre-existing third sector organisations to deliver the agenda of municipal institutions in exchange for unlocking resources. The pretext for what Ralf Darendorff recently identified as nationalisation of the community sector is that the sector needs capacity” building. By implication the capacity building strategist of the municipal stakeholders are exposed for what they truly hold dear, that communities, from which the genuine voluntary sector traditionally evolves organically, are not to be entrusted with governance over resources.

Therefore it follows that funders be they The Community Fund, The Home Office Active Communities Unit, Local Government, Advantage West Midlands, DETR, are singularly obsessed with the capacity building mythology. The capacity building of which the institutional sources are obsessed has mentioned little of the strategy that dare not speak its name, the simple device of involving more people in governance through rewarding their participation.

The capacity of the community or voluntary sector is limited only by the traditional reluctance to provide resources at the local or individual levels to reward the efforts of individuals or community organisations that are prepared to work for community aspirations.

Yet nowhere not even among the most successful of projects is their evidence of large-scale participation. Whilst community led regeneration is mantra according to Dr James Jones, few really know what the phrase means. (Dr James is Bishop of Liverpool and Chair of a New Deal regeneration company).

In the CORN project community leadership can only be satisfactorily achieved and sustained with social cement that builds over time greater levels of participation. CORN does so through rewarding time as a kind of money, borrowing as much from air miles as supermarket loyalty points as it does from old-fashioned volunteering. In his New Statesman Essay David Boyle makes the strongest case for rewarding the one commodity in abundance in poor areas the “time” available for community involvement.

The practice of CORN is to build community involvement in an egalitarian way; an hour is an hour no matter who contributes, in what way to the community. Shortly after election on the 2nd June 1997 the prime minister set out the main policy objective. **“The basis of this modern civic society is an ethic of mutual responsibility or duty. It is something for something. A society where we play by the rules. You take out if you put in. That’s the bargain”.** In 1998 in **“Bringing Britain Together”** he states **“success depends on communities themselves having the power and taking the responsibility to make things better...”**

In regeneration areas both public and market sector are proving ineffective in promoting the inclusion of all, they are not restoring the magical ingredient of social capital. The public sector one size fits all

welfare and regeneration policies simply lack the flexibility to meet need. The municipal response to the challenge of community led regeneration has yielded virtually no large-scale participation. The public services in these areas make huge expenditure with little impact on the quality of life experiences of people in these communities. In some regeneration areas the market long ago discarded them because little sustainable profit is available from impoverished communities.

Attempts at subsidising market solutions in large spend regeneration of docklands schemes and other devices, often mean that once gentrified these communities soon become the homes of wealthier groups. The original residents having been moved on along with the old buildings and industries that once thrived and are now abandoned as profitless. In the case of both public service and market there is insufficient value attached to sweeping the waste ground at the end of a block of flats, in other cases local knowledge is simply missing of what are local priorities etc.

There are many things that need doing in regeneration areas and the prime minister is correct when he suggests that the residents of such areas are best placed to make a difference. The refrain from many is “what do I get out of it” the experts and officers get a salary etc. B-MAG’s anti-poverty work suggests the one method that remains untried is the simple process of reward as stated by the prime minister “you get out if you put in”.

CORN is neither a work for welfare or a welfare spend solution. CORN returns to understanding that all of us are motivated by reward. That the deal for many stuck on welfare has been predicated simply on reducing and increasing specific benefits and with successive governments increasing compulsion to coerce individuals from welfare to training programmes and short term work. The CORN (Communities Own Resource Network) provides access to goods and services for the poorest families and allows households to put something in to the community in exchange for these goods and services. In short, every person is invited to build the magical ingredient of social capital, which is pump primed by an integrated process for the rewarding of participation.

This paper goes some way towards answering the critics of B-MAG that rewarding the poor is too complicated. B-MAG is grateful to the authors who could have said no, it will not work. They chose not to and have provided an analysis of the technical workings of legislation that will

impact on rewarding participation schemes. B-MAG still seeks an opportunity to deliver the CORN project and welcomes dialogue with public, private or voluntary sector bodies that have an interest in the ideas in this paper and the two papers published in 1999. It is in our view time for those that seek the participation of the poor to integrate into all regeneration practice effective methods for rewarding participation.

**BHOPINDER BASI**  
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## About this paper

This is a legal paper commissioned by Birmingham Money Advice and Grants (B-Mag), as part of their current project developing proposals for rewarding participation on the three estates that form the New Deal in the Communities area in Kings Norton in Birmingham.

We have been asked to consider the proposed model for rewarding participation to be used on the three estates. We have been asked in particular to consider the possible effects of the proposed model on entitlements to social security benefits.

We have not been asked to consider the effects of the proposed model in relation to, for example, taxation law or employment law. We have also, necessarily, restricted our paper to the most common benefits and issues, which are likely to arise. Our paper is accordingly limited in its application.

Ultimately, the application of the law in any individual case falls to be determined by decision makers, tribunals, commissioners and the courts. That does not, in our view, diminish the value of considering in advance how the law might be applied. Our paper reflects our view of the questions that are likely to arise.

In relation to CORN activity, we understand that this may take a variety of forms, many of which would be conventionally described as voluntary work. For this reason we examine in particular detail the rules about voluntary work, but since not all CORN activity is analogous to voluntary work, we also explore other rules where they seem likely to be relevant.

We should highlight that we focus on the relationship between CORN and the individual claimant. There may be a separate relationship between any voluntary organisation and its volunteers. Such voluntary organisations must also abide by the rules we explore.

So far as rewards are concerned, we have proceeded on the basis that all rewards are of goods and services in kind.

In part I we set out the proposed model for administering CORN, and in particular we examine the trust model upon which it is based. We do so in detail because it is essential to an understanding of all that follows

that the proposal which we examine is not directly to hand out goods and services in exchange for community activity. It would be fair to say, despite the shorthand, "rewarding participation", that this proposal does so only indirectly!

In parts 2-6 we examine the possible consequences of CORN for different social security benefits. We concentrate in particular on Income Support and JSA, tax credits and benefits for incapacity before rounding off with an overview of other benefits.

We repeatedly use the format in which we identify any potential problem areas in a box, then provide the law and commentary, then summarise our conclusions in the shaded areas.

In the final part, we review recent developments, and provide a summary and conclusion, which is, broadly:

***That most individuals can participate in CORN activities without detriment to entitlement or the amount of their benefit, but***  
***(a) participants ought to take advice to confirm the possible effects of participation on their benefits;***  
***(b) the greatest potential for participation arises for those who negotiate the terms of their participation in advance with the authorities administering benefits;***  
***(c) because CORN does not suspend any existing benefit rules, no-one should undertake any activity that they have declared themselves to be incapable of performing or unavailable to perform for the purposes of their benefit.***

***These provisos do not, in our view, limit the fundamental integrity of the scheme – we would have made the same recommendations in respect of paid employment, but that does not make paid employment undesirable for the residents of the Kings Norton estates.***

# **I - Examining the proposed model of delivery of CORN**

## **1.1 Background**

CORN is a proposed project of New Deal in the Communities on the three estates in Kings Norton in Birmingham. Interest in the principles of CORN has been widely expressed both by other New Deal areas and also by other regeneration projects such as Sure Start. This paper is limited to providing an opinion on the proposed model to be used in Kings Norton in Birmingham, and cannot be treated as an opinion on the lawfulness of any variation.

CORN stands for Community Owned Resource Network. The project title is "Rewarding Participation". These titles give some idea of the admitted objective of CORN, which is that participation by residents in community based activities that promote the objectives of the New Deal in the Communities programme should be rewarded, as a means to promote such participation.

The government wishes to encourage such participation, and has asked New Deal in the Communities providers to give consideration to how participation is to be rewarded. This project has been devised in response to that challenge.

## **1.2 Proposed method of delivery**

It is proposed that CORN on the three estates operates in the following way:

- The government through its New Deal in the Communities budget will provide a fund for the purposes of providing rewards for participation.
- The fund monies will be placed in a charitable trust. As the trust will be charitable it will be important to show that the trustees themselves, or their families, do not receive any benefit from the Trust while they are trustees.

The purposes of the trust will be the relief of poverty and the relief of disadvantaged persons on one of the three estates,

whether such disadvantage is economic or social or some other disadvantage.

The category of people who are going to receive the benefit of the organisations activities is important. This category of people must be sufficiently broad to qualify the organisation as charitable. The category of people will be seen in the context of all the people living on the estates and also the population of the estate in the context of the West Midlands. Where the selection criteria are tight, it is important to be able to show at the application stage that a sufficient number of people qualify for assistance from the trust.

- The trustees will primarily be local residents. New Deal on the three estates has already established structures for the lead role in decision making on the estates to be taken by local residents, and this will be reflected in the terms of the trust.
- Individual residents will make applications to the trust for items/assistance for which they can demonstrate a genuine need. The trustees will consider such applications against stated criteria which will include:
  - What activities an individual must have carried out to become eligible for a reward. The trustees may change the nature and weighting of the activities from time to time.
  - The 'value' of an activity in relation to any specific reward.
  - The applicant demonstrating that they need the goods or services requested.
- In assessing the applications the trustees will establish a process for verifying the activities a person says they have carried out, and will ultimately decide whether to make a 'grant' or not. Trustees will also decide:
  - The weight to be given to different activities;
  - What rewards are to be made available;
  - How to assess a person's need.

- It will be important for the trustees to be seen to be acting at all times in a fair and appropriate way. This means that there will be equal representation on the board of Trustees from each of the three estates. Trustees will only make decisions in relation to applications from the estates of which they are not a resident. In addition the trustees will include in their number at least three people who are not resident on any of the estates. In the event that there are conflicts of interest between applicants from the three estates, the independent trustees will be in a position to make decisions.
- Registration for participation in the scheme will be by a nominated householder, who must be on the electoral register. The decision who to nominate will be left to the household, but the householder will register themselves and the other members of their household.
- Approved activities by any member of the household will be credited to that household's account. Such crediting will depend on verification of the activity having taken place, which will be by the signature of an approved person.
- The trustees will make decisions about which applications should be successful. The trustees will have a contract for services with an independent 'not for profit' organisation, itself being a company limited by guarantee and a registered charity, which will be responsible for implementing the application. It is important that this independent body is involved in the process as it protects the trustees and enables the process of distribution to be seen to be transparent.
- "Approved" for the above purposes means approved by the trustees of the fund, and being in accordance with the terms of the trust.
- Households will apply to the trust for goods and services for which they can demonstrate need. The extent of assistance they may receive will be linked to the credits on that household's account. We recommended, and B-Mag accepted, that the number of credits should be limited to ten per person per week. We believe this better reflects the intentions of the scheme to encourage local participation not to be a work substitute. Our

legal analysis below is based on the scheme set out including this limit.

## **1.3 What is a trust?**

### **1.3.1 Background**

It is clear that trust law is central to the proposed structure of CORN, and therefore further explanation of the trust is needed.

A trust is a mechanism whereby legal ownership and beneficial ownership of property can be separated.

The legal owner is the person or persons in whom the property is lawfully vested. The beneficial owner is the person or persons for whose benefit the property is held. The legal owners are known as the trustees. The people who are intended to benefit from the property are known as 'beneficiaries'. As the trustees hold the property 'in trust' for the beneficiaries they can only use it in a way which is

- in line with the terms of the Trust Deed (which will have been drawn up by the person giving the money in the first place); and
- in the best interests of the beneficiaries

The trustees cannot benefit from the money held in trust themselves and they cannot use the trust's resources to benefit either themselves or their own family. Where a trust is charitable, the Charity Commission will want to be assured that there are mechanisms in place to demonstrate that this does not, and cannot, happen.

A trustee is personally responsible for the funds in his or her care. A trustee cannot delegate the responsibility to anyone else, although he or she can delegate some of the activities surrounding the dealing with the trust's assets to others. This is potentially worrying for trustees who may be made personally liable in law if any of the fund is misappropriated. It is therefore important to ensure that the mechanisms referred to in this paper are in place and work well, and that there is sufficient insurance to protect the trustees should a difficulty arise.

If a person who is entitled to benefit from a charitable trust, or indeed any other sort of trust, considers that the trustees are acting inappropriately they are at liberty to draw the matter to the attention of

the Charity Commission. Whether a trust is registered as a charity or not, if it carries out charitable activities it is potentially subject to the jurisdiction of the Charity Commission.

A trust can be established in many ways, even by accident. The most common ways are by will or by deed. Where a person or organisation giving property or money 'in trust' for a community is still in existence a Trust Deed is put in place. This means that the person or organisation giving the property or money ('the settlor' or 'donor') has control over who the first trustees are and can decide for whose benefit and how their gift is to be used. The Trust Deed is the document in which the donor states what they are putting in trust and the terms on which it is to be held. This information is contained in the Trust Deed, which will also set out other information about how the Trust is to run. When the settlor has transferred the asset to the trust he has no more rights to deal with it or say how it should be dealt with.

This explanation deals with the general nature of a trust. The way in which this general picture applies to CORN is set out below.

### **1.3.2 The CORN trust**

As set out above, in order for there to be a trust in existence, there must be a number of elements. In the case of the CORN Trust these are:

***The property held in trust:*** This will be money being transferred by the government to establish the trust. The sum of money is not yet known, but is not relevant to whether the trust can be established or not.

***The settlor or donor:*** The settlor is the person who by transferring something of value to the trustees' care, creates the trust. The settlor is the person who owns the assets being transferred to the trust fund before the transfer. In this case it is the government through its New Deal in the Communities budget.

The settlor must transfer ownership to the trustees, who then become the legal owners. The settlor also determines for whose benefit the trustees hold the fund.

***The trustees:*** The trustees will be a group of individual people. When the trust deed is established the settlor will state in the trust deed how this group of people is to be made up. The intention is that this group

will be predominantly local residents, and in establishing this group, the existing structures of active residents on the estates will be used. For the rest of this document, we call this group of trustees the "Residents' Committee".

In establishing the way the trust will operate it is important to show that the trustees cannot personally benefit and also that they cannot show favouritism to applicants from their estate or to particular friends. For this reason it is suggested that trustees may not consider applications from residents on their own estate and that there is an equal number of trustees from each estate. There will also need to be some, perhaps a minimum of 3, independent trustees.

**The beneficiaries:** Although the trustees will become the legal owners of the fund, the whole point of the trust is that they do not own the fund for their own benefit, they are only allowed to spend it for the beneficiaries. When the Trust Deed is set up the settlor will set out clearly who is entitled to benefit from the trust fund, i.e. what are the criteria for someone being a beneficiary.

In the case of CORN, the beneficiaries are to be residents of the estates who participate in approved activities.

Note that the settlor decides in general terms in advance who is allowed to be a beneficiary, but the trustees decide in any individual case whether any individual actually benefits.

The question of who the beneficiaries are requires a little more explanation.

Trust law requires that the beneficiaries of a trust can be clearly identified. It is not necessary to be able to list the potential beneficiaries, merely necessary that

"it can be said with certainty that any given individual is or is not a member of the class" **McPhail -v- Doulton [1971] AC 424**

In order to achieve this "who is in and who is out" must be clearly identifiable. On the one hand, it is good enough if it can be said with certainty of any individual that they are or are not a potential beneficiary. On the other hand, there is a requirement that a trust must be "administratively workable", so if the potential beneficiaries are too widely drawn, the trust may not be workable.

In the case of CORN, the trustees' powers will be restricted by the terms of the trust, which will prevent them rewarding anyone other than those participating in approved activities on the three estates. Because there is a verification framework, this is administratively workable, even though membership of the class of beneficiaries may change over time as residents move on or off the estates, different activities are approved or different residents participate.

As has been stated above, in order to qualify for charitable status an organisation must show that it has a sufficiently broad category of beneficiaries. In order to demonstrate that in this context, it will be necessary to show that a sufficient number of people are willing to engage with community based activities to enable them to qualify. If there is an insufficiently broad base, the charity commission will consider the trust to be essentially a private club and will not award it charitable status. This will have clear tax implications for the trust and may also impact on any benefit received by any of the individual beneficiaries.

## **1.4 Summary**

This part has set out some important principles, which will need to be borne in mind as we move to examine the benefit implications of participation and of rewards. In particular, before moving on, we highlight the following:

- There will be no contract between the CORN trustees and the residents;
- There will be no cash payments;
- Activities will be by individuals, but rewards will be by households, so there is no automatic correlation between the person who participates and the person who is rewarded;
- Activity brings a person within the class of beneficiaries rather than giving a right to rewards;
- Rewards are determined by the trustees in response to an application based on need rather than activity.

Having made all of these points, it should perhaps be stressed that there is still an intention of certainty, in that there will be transparency and consistency in relation to what is approved and how, so that participating residents will know that subject to demonstrating their need for what they apply for, they can expect to be entitled to apply for rewards.

## 2. CORN and Income Support

### The problems

- (i) It is a condition of entitlement to income support that neither the claimant nor their partner is in full time paid work.
- (ii) Income support is means tested and both income and capital received can affect the amount of income support payable.

### Analysis of the problems

#### 2.1 Full time paid work

**Section 124 of the Social Security Contributions and Benefits Act 1992** makes it a condition of receiving income support that

"(c) he is not engaged in remunerative work, and if he is a member of a married or unmarried couple, the other member is not so engaged"

Remunerative work is defined in **regulation 5 of the Income Support (General) Regulations 1987** as

"...work in which a person is engaged, or, where his hours of work fluctuate, he is engaged on average, for not less than 16 hours a week being work for which payment is made or which is done in expectation of payment.

(1A) In the case of any partner of the claimant, paragraph 1 shall have effect as though for the words "16 hours" there were substituted the words "24 hours"."

It follows, before any further analysis is carried out, that no person can be treated as in remunerative work solely on the basis of CORN activity. No individual can have any expectation of any reward in respect of more than 10 hours of CORN activity in any week, although there is, of course, no limit on the level of CORN activity they can undertake.

Yet there may be those who are working between 6 and 16 hours per week in part time employment, and those individuals need to know whether their CORN activity must be aggregated with their part time work. To answer this, we need to consider

- What is meant by work;

- What is meant by payment;
- What is meant by expectation of payment.

a) Work. Although this is not defined, it should be noted that the test is work rather than employment. The lack of an employment, or indeed self-employment basis does not prevent an activity being work.

b) Payment. Payment includes payment in kind and not just payment in money. Furthermore, payment need not be based on the value of work.

c) Expectation of payment. The expectation of payment is more than the hope of or the desire for payment. Thus, in **Kevin Smith -v- Chief Adjudication Officer (CA 11-Oct-94)** it was held that work to set up a business was not done in expectation of payment.

On the other hand, expectation of payment may be less than entitlement to payment.

In illustration of all the above, the case **R(FC) 2/90** reviewed the treatment of the income of a Salvation Army Officer. The Commissioner accepted that the relationship of a Salvation Army Officer to the Salvation Army is spiritual not contractual (following **Rogers -v- Booth [1937] 2 All E R 751**), but said that did not prevent the work being remunerative - see a) above.

The Commissioner went on to note that

“The Army neither aims at paying nor professes to pay its officers an amount equal to the value of their work; but rather to supply them with sufficient for their actual needs in view of the fact that, having devoted themselves full time to Salvation service, they are thereby prevented from otherwise earning a livelihood.”

Despite this, the Commissioner concluded that what they received was “something in the nature of remuneration” – see b) above.

The Commissioner also accepted the submission that expectation of payment “does not mean the same as “entitlement” to payment, and I reject [the] submission to the contrary.” – see c) above.

If all this is the case, can participation in CORN activities amount to remunerative work? We believe that it is properly arguable that it cannot, for the following reasons:

- Not only is there no employment or contractual relationship, but there is also no obligation on either side: none on residents to participate, none on the Resident's Committee to reward;
- For the purposes of tax credits, see 5.1 below, for work to be remunerative, there must be an employment situation, albeit that includes self-employment. There is no obvious reason why the corollary for the purposes of income support should be different, despite the lack of express provision;
- Insofar as the Resident's Committee is bound to issue rewards, it is to meet need rather than remunerate activity;
- Although **R(FC) 2/90** suggested that payments to meet need could be remunerative, this was in the context of payment to someone who was "prevented from otherwise earning a livelihood" – in other words, the payment was meeting need in the sense of being an earnings substitute, which is very different from here, where it meets need in the sense of improving quality of life;
- Because rewards are delivered to households, the individual performing activity may have no expectation of reward;
- The trust making the payments does not receive the benefit of the activities.

We accept that there is a contrary argument. The contrary argument would emphasise:

- That although rewards are predicated on a needs-based application, the right to apply is based on CORN activity. In that sense, the link between the activity and the reward is not broken;
- That the level of participation co-relates to the level of reward. In that sense also, the link between the activity and the reward is not broken;

- That “expectation”, acknowledged in **R(FC) 2/90** to be different from entitlement, is also so much less than entitlement that even the relationship created in CORN gives rise to expectation.

This is therefore one area in which we believe the law is in need of testing. We emphasise, however, that the question we have raised is not one affecting the fundamental integrity of the scheme:

- It affects only a small group of potential participants;
- It does not prevent those people participating, it merely affects how their participation is treated;
- Both possible outcomes have positive benefits for some members of the group – either, there will be no limit placed on their CORN activity, or they can use their CORN activity to access new benefits.

***We conclude that the issue of remunerative work is irrelevant both to those who presently undertake no work, and to those already in remunerative work. The work status of neither of these groups is affected. For some of those currently working between 6-16 hours per week, the law is in need of clarification, and in the mean time that group will require advice on how to ensure their participation is to their advantage.***

## **2.2 Treatment of income and capital**

Irrespective of whether activity is remunerative, a question still arises as to whether rewards constitute income or capital.

Again, it is relevant to begin with the basic rules:

- Capital under £3000 is ignored (**Income Support (General) Regulations 1987, regulation 53**), so that if rewards are capital, they are relevant only if they take a claimant’s total capital over this limit;
- The general rule is that all income is taken into account, so that if rewards are income they are relevant unless they are an exception to the general rule.

This begs the questions whether rewards are income or capital, and whichever they are, whose they are?

The regulations do not define income or capital, but make clear that all resources are one or the other. The

“essential feature of receipts by way of income is that they display an element of periodic recurrence. Income cannot include ad hoc receipts” per Bridge J in **R – v- Supplementary Benefits Commission ex parte Singer [1973] 1 WLR 713**

It seems to us that it is in the nature of the rewards in the CORN project that each individual reward is the result of an individual application to the Resident’s Committee. Indeed, as the earlier CORN papers made clear, the scheme of providing rewards in kind on application flows directly from B-Mag’s existing work of raising money on applications to charities.

As such, it seems to us that the rewards amount to capital rather than income.

Is it possible, therefore, in an individual case for a reward to impact on benefit by taking capital over £3,000?

We believe this is not possible. **Schedule 10, paragraph 29 of the Income Support (General) Regulations 1987** provides that

“any payment in kind made by a charity”

is to be disregarded as capital. These are charitable payments, but in any event, most non-charitable payments in kind would be disregarded because they are personal possessions, and **paragraph 10** of the same schedule provides for a disregard of

“any personal possessions except those which have or had been acquired by the claimant with the intention of reducing his capital...”

It follows that we believe that the rewards envisaged by the CORN scheme are exempt capital. For this reason, it is not strictly necessary to consider whose capital it is, or what the consequences would be if it were income.

For the sake of completeness, we express the view that charitable payments made to the household on application become the property of the householder, and are not held on trust for anyone else.

Equally for the sake of completeness, we point out that payment of income in kind is not earnings since **Income Support (General) Regulations 1987, regulation 35(2)(a)** provides that “ “Earnings” shall not include... any payment in kind”. Were the payments to be treated as income, they would therefore be other income in kind, disregarded under **paragraph 21 of Schedule 9 to the Income Support (General) Regulations 1987**.

*We conclude that the value of the rewards is disregarded capital that does not affect entitlement to income support. Further, perhaps strangely, the value of the rewards is disregarded irrespective of whether the participation is treated as remunerative.*

### 3. CORN and Job Seeker's Allowance

#### The problem

It is a condition of entitlement to Job Seeker's Allowance that the claimant satisfies the "labour market conditions" by being available for and actively seeking work. In the case of certain couples, from 19 March 2001, both members of a couple may be subject to these conditions.

#### Analysis of the problem

Before continuing, we should point out that income based job seeker's allowance is a means-tested benefit, subject to the same rules about full time paid work, and about income and capital, as we have already explored above. The regulations and case law explored in the previous part are paralleled or apply equally to jobseeker's allowance as to income support, and so our conclusions would be the same.

The labour market conditions represent an *additional* matter for consideration, in relation to jobseeker's allowance.

That matter is, are people participating in activity on the estates thereby not available for work, or not actively seeking work?

There is no element of compulsion or contract to participation in the CORN scheme. It follows that what we must examine is the consequences of voluntary work.

It is possible for a person to participate in voluntary work and also be actively seeking work. Indeed, **Jobseekers Allowance Regulations 1996, regulation 18(3)(g)** provides that one of the matters to which regard shall be had in determining whether a person is actively seeking work is

"any time during which he was engaged in voluntary work and the extent to which it may have improved his prospects of securing employment."

In other words, participation in voluntary work may be treated as positive evidence that that person is actively seeking work.

However, a person should normally be available for work “immediately” (**section 6(1) Jobseekers Allowance Act 1995**), so that participation may yet limit availability.

The meaning of this word was particularly considered in the case of **Secretary of State for Social Security –v- David (CA) Times Law Reports 30<sup>th</sup> January 2001**. This was an appeal from **CJSA/397/1998**, and concerned a person detained in custody for 42 hours and then released. The Commissioner had allowed the appeal, holding that the claimant had restricted his availability in a way which was reasonable in the light of his physical condition. The Court of Appeal disagreed, holding that reasonable restrictions could only be relied on in relation to conditions agreed in advance in a jobseeker’s agreement. Having said this, the Court did consider that the requirement in section 6(1) did seem unduly onerous.

This discussion has nothing to do with voluntary work, but raises the general point that the terms of a jobseekers agreement ought to be properly negotiated, else there could be problems for any jobseeker.

There are specific provisions in relation to voluntary work. These permit that instead of being available for work immediately, a person need only be available within 2 days. This arises from **Jobseeker’s Allowance Regulations 1996, regulation 5**, which provides:

“5(1) In order to be regarded as available for employment, a person who has caring responsibilities or who is engaged in voluntary work is not required to be available to take up employment immediately, providing he is willing and able to take up employment on being given 48 hours’ notice.

(2) In order to be regarded as available for employment, a person who is engaged, whether by contract or otherwise, in providing a service with or without remuneration, other than a person who has caring responsibilities or who is engaged in voluntary work is not required to be available to take up employment immediately, providing he is willing and able to take up employment on being given 24 hours’ notice.”

“Caring responsibilities” for these purposes is defined in **regulation 4** of the same regulations as:

“responsibility for caring for a child or for an elderly person, or for a person whose physical or mental condition requires him to be cared for, who is either in the same household or a close relative.”

(A “close relative” is defined to include partners, parents, siblings, grandparents, grandchildren, in-laws and partners of any of these.)

“Voluntary work” for these purposes is also defined in **regulation 4** of the same regulations as:

“work for an organisation the activities of which are carried on otherwise than for profit, or work other than for a member of the claimant’s family, where no payment is received by the claimant or the only payment due to be made to him by virtue of being so engaged is a payment in respect of any expenses reasonably incurred by him in the course of being so engaged.”

In part 4.2 below we explore in further detail the concept of "payment... by virtue of" voluntary work. Suffice to say for the time being that provided that CORN activity falls within the category of either caring responsibilities or voluntary work, a person does not have to be available for work immediately, but has up to 2 days.

If the CORN activity does not fall within one of these categories, then it will amount to a person being engaged “whether by contract or otherwise in providing a service with or without remuneration” under **regulation 5(2)**, and the person will not have to be available for work immediately, but has up to one day.

We would make the following observations:

- The voluntary activity, which it is hoped the CORN scheme will generate, is not activity *for* the CORN scheme. Rather, it is expected that people will be volunteers for other organisations providing services on the estate, or providing caring enabling others so to volunteer. The restrictions above are therefore restrictions that *those other organisations must adhere to*.
- It is arguable that, since CORN activities are no more than the mechanism whereby residents become potential beneficiaries, CORN rewards are not payments by virtue of being engaged in voluntary work.
- Even if this view were wrong, the exception in **regulation 5(2)** applies so that a person is not required to be immediately available for work.

To put this last point a different way, we are in no doubt that all CORN activity is engagement otherwise than by contract in providing a service with or without remuneration, so that participation enables a jobseeker to be exempt from the requirement to be immediately available for work. The only question raised by whether the work is voluntary is how long an offer of work can be deferred: 24 hours or 48 hours. In part 4.2 below, we examine voluntary work in the context of incapacity benefit. It does seem to us that it would be appropriate to test the matters we raise there in the context of a jobseekers allowance claimant rather than an incapacity benefit claimant.

However, it is important to return to our starting point, and the jobseeker's agreement. The *general* rule, which the Court strictly interpreted in **David**, is that a person must be available immediately, and reasonable restrictions can apply only to terms of the agreement negotiated in advance. It follows that anyone who wishes to participate in CORN activity but who is required to be available for work ought to protect himself or herself by negotiating in advance the fact that they will participate in such activity as part of their jobseeker's agreement.

This observation reinforces a point that we made in our introduction, that the CORN scheme does not suspend any of the normal rules of benefit.

***In summary, we therefore conclude that a person participating in CORN activity who is required to be available for and actively seeking work must not place any unreasonable restrictions on their availability; such a person should, however, be able to negotiate restrictions on their availability in their jobseeker's agreement, and even to treat their CORN activity as evidence of their actively seeking work.***

## 4. CORN and Incapacity Benefit

### The problems

- (i) To get incapacity benefit, a claimant has to satisfy a test of incapacity - the own occupation test or the personal capability assessment;
- (ii) Even if a claimant meets these rules, they cannot qualify for incapacity benefit in any week in which they actually work.

### Analysis of the problems

We highlight at the outset that each of the problems above relates to incapacity rules, and whether these rules permit CORN activity, rather than earnings rules and whether these permit CORN rewards. The earnings rules are addressed briefly in part 6 below.

#### 4.1 The test of incapacity

This is not the place for a detailed examination of the tests of incapacity. By way of summary, a person's incapacity for work is normally assessed by the own occupation test for the first 28 weeks of incapacity if they are engaged in a regular occupation when they become ill. The test (in **section 171B(2), Social Security Contributions and Benefits Act 1992**) requires the claimant to be incapable

"of doing work which he could reasonably be expected to do in the course of the occupation in which he was so engaged."

Otherwise, incapacity is assessed by the personal capability assessment. This measures capacity by the use of physical and mental 'descriptors', where the claimant is awarded points in accordance with the level of difficulty they have in performing certain tasks. A certain number of points, 15 from physical descriptors, 10 from mental descriptors, or a combination of both types with special rules, needs to be reached in order to be accepted as incapable of work. The rules are set out in detail in the **Social Security (Incapacity for Work) (General) Regulations 1995**.

The reason it is not appropriate to go into this in detail is that it is self evident that a person cannot do something for CORN credits, which

they rely on being incapable of doing for incapacity benefit. But there are too many permutations to examine each of them individually.

By way of example, if a person is treated as incapable of work solely by reason of being unable to walk more than 50 metres without stopping or severe discomfort, that person cannot participate in CORN activity involving long walks. Another person, who qualifies on the basis of being profoundly deaf, will not prejudice their claim if they participate in long walks.

***Once again, our conclusion is that since CORN does not suspend any part of the existing benefits rules, a person who has said they cannot do something for the purposes of their incapacity benefit will be equally unable to do that activity for the purposes of CORN credits.***

#### **4.2 Not being involved in actual work**

Even though a person may satisfy a test treating them as incapable of work, that person may, in fact, hold down employment. For this reason, the legislation further provides that

“...a person shall be treated as capable of work on each day of any week... during which he does work to which this regulation applies...” - **regulation 16(1), Social Security (Incapacity for Work) (General) Regulations 1995**

In other words, even if the claimant could be treated as incapable of work, they won't be if they actually do work. But what does “work” mean for this purpose?

Work is not defined positively. In other words, the regulation does not say what work is, it says what work isn't. That means it is possible to identify certain activities, which are “safe”. The most relevant are:

- therapeutic work
- approved work
- *de minimus* work
- care of relatives and domestic tasks
- voluntary work

a) Therapeutic work. This is work carried out on specific advice from a doctor, which is, in effect, part of a treatment programme. It can be paid

up to a certain limit, currently £58.50. The detailed rules are in **regulation 17, Social Security (Incapacity for Work) (General) Regulations 1995**.

b) Approved work. This is work undertaken on a trial basis, arranged through the Employment Service for which no payment "in the nature of earnings" is made. It represents a new concession from April 3<sup>rd</sup> 2000 found in **regulation 4(2) Social Security (Approved Work) Regulations 2000**.

c) De minimus work. This is work, the amount of which is trivial or negligible. This is a "common sense" rule found not in legislation but case law, commissioner's decision **CIB/5298/1997**.

d) Care of relatives and domestic tasks. "Relatives" are defined slightly more broadly than close relatives, but like the JSA Regulations considered in the previous part, there is a list of those included. The list is to be found in **regulation 2, Social Security (Incapacity for Work) (General) Regulations 1995**, and includes both those defined as relatives and those defined as close relatives. "Domestic tasks" are those carried out in the claimant's own home.

e) Voluntary work. The definition of voluntary work closely parallels, but is not identical to, that in the Jobseeker's Allowance Regulations, reproduced in the previous part. **Regulation 2, Social Security (Incapacity for Work) (General) Regulations 1995** defines a volunteer as:

"a person who is engaged in voluntary work otherwise than for a close relative, where the only payment received by him or due to be paid to him by virtue of being so engaged is in respect of any expenses reasonably incurred by him in connection with that work."

A question may arise whether receipt of a CORN reward amounts to a "payment... by virtue of" voluntary work. Payment can certainly include a payment in kind, but is it in the nature of a CORN reward that it amounts to a "payment" at all? The word "payment" is not defined, and the approach taken by the social security commissioners where a word is not defined is to give it its everyday meaning. The primary definition of "payment" in the Oxford English Dictionary is:

"the action, or an act, of paying; the remuneration of a person with money or its equivalent; the giving of money etc in return for something or in discharge of a debt..."

*fig. The action, or an act, of rendering to a person anything due, deserved or befitting, or of discharging an obligation..."*

The definition of payment seems generally to be by way of exchange, but broad enough to include, for instance, the payment of a charitable grant. It seems to us that it should be argued that if a CORN reward is a payment only in the nature of a grant, then it is not a payment "by virtue of" the voluntary work. However, as we indicated in part 3 above, the question we have just explored also arises in the context of jobseeker's allowance, and is better tested in that context.

We have spent some time focussing on the voluntary work exception. We would highlight three points by way of reminder of what has gone before:

- Voluntary work is only one of a number of routes to the disregarding of activity by claimants receiving incapacity benefit. Not all CORN activity will be voluntary work - for instance, helping out a close relative may be CORN activity but cannot be voluntary work. Further, even if the voluntary work exception does not apply, another one may apply in respect of the same work;
- The regulations confirm that the five exceptions above are not treated as work; given the negative nature of the definition, it does not follow that activities outside of these are work. For instance, going shopping does not immediately seem to fall within any of the exceptions listed, but is an incapacity benefit claimant who goes shopping, working?
- We have been examining, under this heading, whether a claimant would be treated as actually working; even if a claimant is not treated as actually working, they may still put their claim at risk if their activities reveal them to be capable of work within the meaning of the regulations.

***We conclude that incapacity benefit claimants are certainly not precluded from CORN activity, but the fact of their incapacity necessarily limits their participation. Any incapacity benefit claimant should carefully consider which exemption they rely on, as the rules of some of them rely on advance approval from a doctor or the employment service. Again, we advise incapacity***

***benefit claimants should seek advice to ensure that the requirements of their exemption are properly met.***

## 5. CORN and tax credits

### The problems

A person in full time work for the purposes of tax credits, or their partner, is allowed to do more work, but

- (i) will the extra activity count as additional hours of work;
- (ii) would CORN rewards count as income?
- (iii) would the nature of the activity conflict with the disability rules for a disabled persons tax credit?

### Analysis of the problems

#### 5.1 Hours of work

Tax credits, now paid by the Inland Revenue, provide a supplement to the income of low paid workers in full time remunerative work. The concept of remunerative work is one that is shared with income support and income based jobseeker's allowance. Typically, however, the definition of remunerative work for tax credits differs slightly from that for income support and income based jobseeker's allowance, and the difference is significant for CORN purposes.

Although the benefits are now paid by way of a tax credit, the regulations refer to the old names of the benefits.

A person is treated as in remunerative work where the work is for at least 16 hours a week and done for payment or in expectation of payment - **regulation 4(1), Family Credit (General) Regulations 1987** and **regulation 6(1) Disability Working Allowance (General) Regulations 1991**.

Although work from different employments can be aggregated if it is carried out by the same claimant, claimants cannot rely on CORN activities to increase their hours and bring them within the scope of tax credits. This is because each of the regulations above impose a third condition on claimants for work to be remunerative, a condition which excludes CORN activity from the scope of remunerative work, and is not shared explicitly with income support or income based jobseeker's allowance. This is that

"he is employed at the date of claim and satisfies the requirements of paragraph (5)" - **regulation 4(1)(c), Family Credit (General) Regulations 1987** and **regulation 6(1)(c) Disability Working Allowance (General) Regulations 1991**.

Work only satisfies the requirements of paragraph 5 if, among other things,

"(i) it is the work he normally does, and  
(ii) it is likely to last for a period of 5 weeks or more beginning with the week of claim..." - **regulation 4(6), Family Credit (General) Regulations 1987** and **regulation 6(6) Disability Working Allowance (General) Regulations 1991**.

Therefore, work is only remunerative for the purposes of tax credits if, in addition to the matters discussed at 2.1 above:

a) The claimant is employed. While this includes self-employment, there must be an employment situation, and the relationship in CORN does not amount to an employment situation; also

b) The work is the claimant's 'normal' work. Also, the work must be the claimant's normal work. Applying **R(FIS)1/84**, the suggestion is that normal work is a situation likely to prevail for the 26 weeks of an award.

In our view, the additional requirements of employment and normal work will exclude CORN activity from the scope of remunerative work for the purposes of tax credits.

However, for no clear reason, the regulations defining remunerative work go on to make specific provision to deem voluntary work as not remunerative. The provision is curious, because voluntary work as defined would appear to be excluded by **regulation 4(1)(c), Family Credit (General) Regulations 1987** and **regulation 6(1)(c) Disability Working Allowance (General) Regulations 1991** anyway. For the purposes of CORN, all it appears to do is provide a possible additional reason to disregard CORN activity as remunerative work.

The provision is found in **regulation 4(3), Family Credit (General) Regulations 1987** and **regulation 6(3) Disability Working Allowance (General) Regulations 1991** which provides that

"A person who otherwise satisfies all of the requirements of paragraph 1 shall not be treated as engaged in remunerative work insofar as

(a) he is engaged by a charitable or voluntary organisation or is a volunteer, where the only payment received by him or due to be paid to him is a payment which is to be disregarded [as expenses]."

The disregarded payments are expenses "if he otherwise derives no remuneration or profit from the employment" (**Schedule 2, paragraph 2, Family Credit (General) Regulations 1987** and **schedule 3, paragraph 2, Disability Working Allowance (General) Regulations 1991**)

A "volunteer" in this particular instance is not defined in regulations, but has been defined in case law. Decision **R(IS) 12/92** concerned a claimant who worked without payment in a shop owned by his parents. The commissioner held this to be voluntary work because:

"I consider that a volunteer is one who, whilst not necessarily associated with a charitable or voluntary body, of his own free will i.e. without any legal obligation, performs a service for another person, and does so without any expectation of payment."

In our view, this definition may be applied to CORN activity.

It is important to note the various steps here. To begin with, we have pointed out that CORN activity is not remunerative work. We explored the meaning of remunerative work in part 2.1 and above. But the tax credit regulations make further specific provision not to have regard to the work of a volunteer. These rules apply where

- The person is a volunteer as defined above in **R(IS) 12/92**; and
- Receives no payment other than expenses; which expenses can be disregarded only if
- The claimant otherwise derives no remuneration or profit

We have discussed, at 2.1 and above, the arguments that CORN rewards, linked as they are to a needs-based application to a trust, do not count as payment, remuneration or profit from volunteering. Here, we need only note that whether or not CORN rewards amount to remuneration, or credits give rise to an expectation of payment, only affects whether CORN activity can be disregarded under the specific

voluntary work concession, and leaves untouched our conclusion that it can be disregarded because of the lack of an employment situation.

***We conclude that CORN activities cannot count towards hours of work for the purposes of tax credits, whether this be to the claimant's advantage or detriment.***

## **5.2 Would the CORN rewards count as income?**

At 2.2 above, we considered the treatment of income and capital for income support purposes.

Our conclusions apply equally to tax credits, since the income support regulations on which they are based are replicated in the Family Credit and Disability Working Allowance regulations.

Specifically, **Schedule 3, paragraph 31, Family Credit (General) Regulations 1987** and **schedule 4, paragraph 31, Disability Working Allowance (General) Regulations 1991** provide that payment in kind from a charity is ignored as capital; **Schedule 3, paragraph 11, Family Credit (General) Regulations 1987** and **schedule 4, paragraph 11, Disability Working Allowance (General) Regulations 1991** provide that personal possessions are ignored as capital; **regulation 19(2)(a), Family Credit (General) Regulations 1987** and **regulation 21(2)(a), Disability Working Allowance (General) Regulations 1991** provide that payments in kind do not count as earnings; and **Schedule 2, paragraph 20, Family Credit (General) Regulations 1987** and **schedule 3, paragraph 20, Disability Working Allowance (General) Regulations 1991** provide for payments in kind to be ignored as income.

***Once again, our broad conclusion is that CORN rewards are to be treated as exempt capital, either because they are payments in kind from a charity, or because they are in the nature of personal possessions.***

## **5.3 The disability and disadvantage test for disabled person's tax credit**

**Section 129(1)(b), Social Security Contributions and Benefits Act 1992** makes it a condition of getting disabled person's tax credit that the claimant

"has a physical or mental disability that puts him at a disadvantage in getting a job."

**Schedule 1, Disability Working Allowance (General) Regulations 1991** sets out a lengthy list of ways in which this can be shown.

*This is a situation in which a person who has relied on a physical or mental disability putting them at a disadvantage in getting a job cannot then participate in CORN activity that is inconsistent with the disability condition they rely on.*

## 6. CORN and other benefits

### The problem

Some non-means tested benefits are earnings replacement benefits, and are affected by earnings related income.

### Analysis of the problem

Earnings affect entitlement to Invalid Care Allowance, Incapacity benefit, and Severe Disablement Allowance. Earnings of adult dependants of claimants may also affect any increase in these benefit, or any increase in retirement pension, maternity allowance or widowed mothers allowance which is paid for other adults or children.

It should be pointed out that our earlier section on incapacity benefit looked at the effect of the rules on incapacity, not the rules on earnings.

It should also be pointed out that for new claimants from 9<sup>th</sup> April 2001, Widowed Mother's Allowance is to be replaced by Widowed Parent's Allowance.

For the purposes of these benefits, earnings are defined in the **Social Security Benefit (Computation of Earnings) Regulations 1996, regulations 1, 9 and 12**. The effect of the definition is that earnings can only arise from "employment as an employed earner" or "employment as a self-employed earner".

***Since CORN activity is neither employment nor self-employment, it follows that CORN rewards cannot be earnings for these purposes.***

## 7. Summary and Conclusions

On 7<sup>th</sup> February 2001, David Blunkett delivered a landmark speech on volunteering, “From Strength to Strength: Re-building the community through voluntary action”, to the Annual conference of the National Council for Voluntary Organisations. In it, he put forward a vision for encouraging further voluntary action. He said,

“We can do more to encourage unemployed people to become involved in voluntary activity and remove barriers and disincentives which prevent it.”

He announced two new measures. The first was to extend to one week the time a volunteer can have to give up voluntary work and take up paid employment – a change which, when it comes in will represent an amendment to part 3 of this report. The second was to allow the payment of expenses to volunteers in advance.

What he has not done is to create a scheme to reward participation.

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As we indicated in our introduction, neither does Birmingham Money Advice and Grants’ scheme, strictly speaking, reward participation. On a proper construction, the CORN scheme

- Encourages participation by the incentive of giving residents the right to apply to a trust for assistance; and
- Makes payment from the trust only on a needs based application.

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Our journey through benefit legislation has been a quagmire, and for no apparent reason:

- Why is a volunteer defined in legislation for incapacity benefit purposes, but in caselaw for income support purposes?
- Why is a distinction made between
  - ❖ work in expectation of payment;
  - ❖ payment by virtue of work; and

❖ work from which is derived remuneration or profit?

- Why does the definition of caring for a relative include aunts and uncles for incapacity benefit, but exclude them for jobseeker's allowance?

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In the absence of a consistent and coherent benefit scheme, the approach which has been taken in the scheme which we have examined is to go so far beyond a relationship of activity and reward that the link between the two is broken.

In effect, our conclusion is that it may well be that this link has been successfully broken, and that on any of the definitions we have had to examine, the CORN rewards envisaged do not amount to remuneration or its equivalent. But more importantly, whether this is right or not does not affect the ability of the CORN scheme to deliver what it intends to most participants. We have thrown up areas that need clarification, but none which undermine the workability of CORN or prevent its being put immediately into effect.

We have not been able to reach a conclusion that the initial activity is without consequence. On the contrary, we have repeatedly made the point that CORN does not suspend any benefit rules, and that any activity that people have declared themselves to be incapable of or unavailable for is likely to prejudice entitlement to benefit.

We have gone further, and said that in certain cases, prior agreement should be reached in relation to activity, involving the benefit authorities: therapeutic work required the written recommendation of a doctor; approved work requires to be agreed with the Employment Service; voluntary work should be negotiated into jobseeker's agreements.

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In collaboration with the relevant authorities, it is our hope and belief that the residents on the three estates will find voluntary work even more rewarding than David Blunkett envisaged.