Making Mergers Work:
Helping you succeed
Tips for successful mergers

1. The merger should be in the best interests of the charities’ beneficiaries

2. The charities involved must be compatible in objects, culture and values

3. Effective communication with all stakeholders from the outset is vital – processes and outcomes should be clear to all involved

4. The charities’ trustees should be united in believing that the merger is the best way forward

5. Identify the key roles and responsibilities in the merger process

6. Communicate and negotiate in a way that reflects the interests of all parties

7. Contact the Charity Commission at an early stage if advice is needed

Our website offers a wide range of easily accessible online services, tools, information and guidance. Before contacting us for advice or help you might like to search our online database of frequently asked questions. Most people can find the answer they need without making a phone call or writing an email. Alternatively, our Contacting us page is linked to from the top and bottom of every webpage.

This toolkit should be read alongside the Charity Commission publication Collaborative Working and Mergers: An introduction (CC34)
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1. Introduction

1.1 Merger explained

A merger of charities means two or more separate charities coming together to form one organisation. Either a new charity is formed to continue the work or take on the assets of the original charities, or one charity assumes control of another.

Trustees must act in accordance with the powers in their charity’s governing document or those given to them by law to make sure that any merger is legally sound. If these powers are insufficient, the trustees may need to come to us for additional powers.

Merger and collaborative working are often talked about in the same breath. Although collaborative working can act as a precursor or first step to merger, they are quite different in terms of practical application and legal considerations. We have produced Choosing to collaborate: Helping charities succeed to assist charities that are interested in working with others in this way.

1.2 Charity Commission and mergers

The Charity Commission encourages charities and trustees to look regularly and imaginatively at what more they can achieve for their charity’s beneficiaries by working with others. Some charities may decide that merging with other charities is the best way of meeting their current and future beneficiaries’ needs.

However, it is not part of our agenda to push charities towards merger. Diversity and independence are important strengths in the charitable sector and we recognise that every charity has its own distinctive contribution to make to society.

The Commission’s role in facilitating mergers focuses on the legal and constitutional aspects. The majority of mergers do not need our consent. A charity’s governing document will usually contain the powers needed to allow a charity to merge with another. However, we must be involved if a charity does not have the power it needs or if its governing document specifies our consent is necessary. At the end of the merger process, we must be informed in order to keep the Central Register of Charities up to date. We are also happy to offer charities good practice advice on general aspects of merger.

We encourage charities to contact us early on in the merger process if they want advice or need legal authority. Annex 1 Approaching the Commission about mergers sets out how to approach us and the information we will need.
1.3 Using this toolkit

*Making mergers work: Helping you succeed* is designed to be of practical help to all charities considering, planning or progressing a merger.

The toolkit highlights the common pitfalls and offers good practice advice that should help charities merging, from considering the decision through to evaluation. It focuses on some of the most important legal and process aspects of merger, as well as addressing many of the issues that arise frequently in our casework. We have also signposted to other support and resources that provide more specific information.

Working through the toolkit will enable charities to identify the different stages and practical steps essential to a successful merger. It will also help them to decide whether or not they will need our assistance and where they should consider taking professional advice. We have identified useful information from other sources throughout the toolkit and we give contact details of these organisations in section 6.2.

‘Must’ and ‘should’

Where we use ‘must’, we mean there is a specific legal or regulatory requirement. Trustees and the charity must comply with these requirements. These sections are highlighted by the symbol.

We use ‘should’ where we recommend trustees follow good practice guidance unless there is a good reason not to.
2. Considering a merger

Key questions for trustees

1. Is a merger in the best interests of our charity and its beneficiaries? Will it improve the quality of service we offer by, for example, delivering cost savings, increasing income or making best use of our resources?

2. Is our proposed partner charity/ies compatible in terms of its objects, strategic vision, culture, values, governance arrangements, organisational structures and funding base?

3. Have we approached our stakeholders and beneficiaries for their views? If not, how and when are we going to?

4. What will be the risks and benefits for our charity of a formal merger? Have we considered the wider impacts on our charity?

5. Are there any other forms of collaborative working we could explore that might achieve the same benefits?

6. Have we estimated the full cost of merging? This should include issues such as staff time, rebranding, professional fees, relocation and unanticipated costs.

7. Does our charity have members? If yes, does our governing document require the consent of the members in order to merge?

8. Are we carrying out a due diligence exercise, can we do it in-house or do we need professional advice?

2.1 Knowing your organisation

All charities should regularly review their aims and how they operate, including ways of working and organisational health. This can help identify whether it would be advantageous for the organisation to consider collaborating or merging with another organisation to improve services to beneficiaries.

For further information:

- Tools for Success (Cass Business School): a series of guides and templates and an online self assessment tool that enable organisations to identify areas of strength and capacity gaps.
- The Big Board Talk (Charity Commission): a checklist that helps trustee boards review how they operate in light of the economic downturn.
2.2 Understanding the drivers for merger

Charities and trustees should always be very clear about the factors that influence their decision to merge. Open dialogue between partners from the beginning can prevent complications down the line.

A merger could be the right option for a number of reasons including:

- **Increased reach of services**: Charities can reach a wider number and range of beneficiaries.
- **Reduced costs and duplication**: Charities can improve their organisations’ effectiveness, reduce duplication, benefit from increased purchasing power and make better use of resources eg sharing back office services.
- **Improved access to funding**: Increasingly funders see partnership working as a way of getting better value for money, and many small grant funders offer funding to allow charities to explore the possibility of working together or merging.
- **Financial uncertainty or difficulties**: Charities can overcome financial challenges by merging with another charity.
- **Benefits from scale**: Larger organisations can benefit from links with or the special knowledge and expertise of smaller organisations. Smaller organisations can benefit from profile, capacity and reach of larger organisations.
- **Better public profile**: Charities can access a wider supporter base, increase public awareness and improve credibility with decision makers. Merging can also bring the benefits of increasing public trust and confidence, as charities are viewed as displaying collaborative as opposed to over-competitive instincts.
- **Improved learning and skills**: Charities can share experiences and learn new and better ways of working.

2.3 Finding partners

Many charities that merge will know of or have worked with their merger partner before.

For charities that do not have a potential merger partner, there are websites and organisations that can help. Useful starting points are listed below.

In order to merge, organisations must have compatible objects. The process of merger is more straightforward where organisations are compatible in other areas too. Other basic considerations when looking at any potential partner, even if they are well known and trusted, include:

- values and aims;
- culture and working styles;
- financial resources and viability;
- funding sources;
- policies;
- activities;
- needs of stakeholders;
- organisational strengths and weaknesses;
- areas of incompatibility or disagreement.

These areas can be explored in greater detail as part of the formal due diligence exercise (see Annex 3).
**For further information:**
- Register of Charities (Charity Commission): provides the contact details for any registered charity and also other relevant facts such as its objects. This can be used to search for charities working in a particular area or established for particular purposes.
- Small Charities Coalition (Small Charities Coalition): matches small charities with other organisations to increase resources or improve knowledge and skills.
- Funding Central (Partner Zone): users are able to search for organisations with which to collaborate on projects and to develop joint bids.
- Local umbrella bodies such as Councils for Voluntary Services (CVSs) might be a good source of information, as may Local Strategic Partnerships (LSPs).

### 2.4 Understanding the impacts on your charity
Charities and trustees should also be clear from the outset about the impact of the proposed merger on their organisation and beneficiaries. This can be done by considering the immediate and wider impacts on the beneficiaries, staff and reputation of the charity and by assessing what the charity might gain and lose in the short, medium and long term.

Charities should consult with stakeholders to get a full assessment of the likely benefits and risks.

**For further information:**
- Charities and Risk Management (CC26) (Charity Commission)

### 2.5 Costing and resourcing a merger
Charities should not underestimate the cost of a merger. They should set aside adequate levels of funding and keep the actual and anticipated costs under review. Some costs can be calculated in advance, such as:
- restructuring, changing or developing of services;
- integrating technology and information systems;
- professional fees;
- advertising and rebranding;
- staff time;
- relocation expenses;
- governance costs, such as special general meetings, or amendments to membership or beneficiary records;
- stakeholder consultation and involvement.
Unforeseen costs that should be considered might include:

- losing out on new initiatives, opportunities or income sources because of time spent on the merger;
- possible disruption, for example through office relocation, or through redundancy processes;
- disruption to delivery of aims and objectives; and
- loss of existing funding (for example, where a funder is currently donating to both charities but their policy states that they can only give to one organisation).

In the short term there may be more costs than benefits. If trustees are considering a merger, they need to be confident that the longer-term anticipated benefits justify those costs.

Some funding bodies provide grants for charities to explore and undertake a merger and these are worth exploring.

**Barriers to success**

Charities should take time to think about the potential barriers to the success of the merger. Barriers can be cultural, structural, financial, professional or political.

Identifying these at an early stage and looking at whether they can be overcome will help in deciding whether or not to proceed with the merger. The most problematic barriers identified by charities include:

- lack of adequate communication with stakeholders;
- personality clashes;
- culture clashes;
- no stated merger objectives or evaluation mechanisms;
- integration of staff from different organisations;
- integration of IT systems;
- lack of project planning/process management;
- rushing the process or unrealistic targets for merger

**Box 1: Barriers to success**
2.6 Deciding to merge

It is the charity trustees who must decide whether or not to take any merger proposal forward. In doing this they may take on board the views, proposals or suggestions of staff, service users, funding bodies and professional advisers, but ultimate responsibility for the decision to proceed lies with the trustees. Charities should also consider whether other forms of partnership working are more appropriate.

When deciding to merge, trustees should remember that the primary purpose for a merger should be to better meet the needs of the beneficiaries or users of all the charities involved, and make the most effective use of their charitable funds.

Whether charities can merge will depend on whether their governing document contains powers that could be used to achieve a merger. The most common power is one which allows trustees to dissolve or wind up the charity and pass the charity’s assets over to another charity or other charities with a similar purpose or purposes. Some charities may have an express power to merge. If merger is not mentioned or if charities are in doubt they should seek our advice.

The typical merger decision process is set out in box 2 and more information about legal issues in section 3.

Where a charity has a membership, the members may have the right to vote for or against a merger proposal put to them usually at a general meeting. This means that, if the trustees have decided that a merger is the best way forward, they will need to make sure that any merger proposals have the support of the membership at an early stage. Effective communication and the ability to show how any proposal to merge is in the best interests of a charity’s beneficiaries will be essential to take the process forward. Early feedback from the membership and other stakeholders will be an important part of the decision making process.

2.7 Due diligence and how it is used

‘Due diligence’ is the term used to describe the steps organisations take to assure themselves that a merger is in their best interests. The results of a due diligence exercise is that a charity has full knowledge of the organisation they seek to merge with. In other words, there are no surprises.

The trustees are responsible for deciding on the appropriate level of due diligence required when considering merger with another charity. The costs of commissioning due diligence work are a proper use of charitable funds, but should be forecast at the outset and regularly reviewed to ensure they remain proportionate to the risks involved.

Where charities wish to look at merger, a risk analysis which concentrates on all aspects of the merger proposals should help establish priorities for the due diligence exercise.

Due diligence checks fall into three main categories:

- financial;
- commercial;
- legal.

At Annex 3 we have attached a checklist which gives an idea of what should be included in a due diligence exercise. It is not exhaustive and is included for guidance purposes only. The type and depth of due diligence checks are a matter for trustees to decide upon with the benefit of professional advice.

For further information:

- Due diligence checklist (Charity Commission)
- Due Diligence Demystified: What it is and how you manage it (NCVO)
A typical merger decision process

**Trustees of each charity consider merger feasibility independently**
This may cover costs, risks, benefits to each charity.

**Inform Charity Commission about merger proposal**
The Commission can offer early advice on the legal/constitutional issues.

**Form a project board or steering group**
This should be made up of trustees and senior manager representatives with relevant skills from all charities involved. They will lead on negotiation and report back to respective trustees.

**Trustees commission formal due diligence exercise**
This can be carried out in-house or by professional advisers. Trustees will need to determine the level of due diligence required.

**Trustees take formal decision to merge in light of due diligence exercise and inform Charity Commission of decision**

**Appoint a project manager and project team**
This is an operational team who keep oversight of the merger planning and communication. They should feedback to trustees regularly.

Box 2: Typical merger decision process
Case study: Theatre Royal Bristol and Bristol Old Vic

The ancient Theatre Royal in Bristol has been managed by two separate charitable companies for many years. The trustees approached the Commission for help with plans to merge the Bristol Old Vic (the production company) with the Theatre Royal Bristol (the company that looks after the theatre building). The Commission was able to advise on the proposed structure and provide legal authority by way of a Scheme to safeguard the theatre building for the future. The new structure will make administration and management much easier and cost effective for the trustees.

A representative of the charity said

“Over time, it became apparent to the trustees of the Theatre Royal, Bristol and of the Bristol Old Vic Trust Limited that as separate, albeit complimentary, charities, they would increasingly encounter conflict in pursuing their individual charitable objects. The first step was to acknowledge that. The second was to take the leap of imagination needed to consider the adoption of new objects more suited to the modern world without losing the core purpose of either charity - and a merger of operations to embed those objects in a single charity and board of governance. At this point we approached the Charity Commission’s merger team for help. Merger will clarify and reinforce our joint mission, help us to raise funds and attract talented trustees for the future.”

For further information:

• www.bristololdvic.org.uk/
3. Financial and legal issues

**Key questions for trustees**

1. Do we have the relevant legal powers to achieve our plan or will we need help from the Charity Commission?

2. Have we decided on a legal structure for the merged charities?

3. Are we taking the appropriate professional advice and in what areas?

4. Are there any employment issues we need to consider? These could include issues such as TUPE (Transfer of Undertakings (Protection of Employment) Regulations) requirements, pension liabilities and compliance with employment law.

5. Are there restrictions on our charity’s sources of income? These could include special trusts, restricted funds or permanent endowments.

3.1 Checking for compatibility of objects

If charities have completely different objects then merger is not normally possible. For example, it is unlikely that a charity set up to further a particular religion would be able to merge with a charity that has objects of advancing amateur sport. If charities proposing to merge have different or incompatible charitable objects, but trustees felt there was a strong case for merger, then they would need to explain that to the Commission. The Commission may be able to help by providing authority to alter or widen the objects.

In order to change objects in this way, the trustees would need to show us that their charity’s trusts had ceased to be an effective use of charitable funds either because they were no longer capable of being furthered or because they were too restrictive to allow the charity’s funds to be used to in the best possible way.
Examples of compatibility of objects

• If two charities have objects for the general relief of poverty overseas then it is unlikely that there would be any legal problems if they wish to merge. The objects of both charities are clearly compatible, even though they may further their objects in different ways.

• If a charity’s objects specify a particular location, for example to relieve poverty in Africa and it wishes to merge by transferring its funds to a charity with wider objects, for example, the general relief of poverty overseas, then merger could go ahead with the funds for the Africa charity accounted for and applied as a restricted fund. It would not be possible for the charity with the wider objects to transfer its funds to the Africa charity as it would be restricting the use of its assets and therefore possibly excluding some of the beneficiaries it was set up to assist.

• Two charities may exist to further education but one of them may specify in its objects that a specific educational principle should be followed or that funds should be applied in a specific geographical area. Where this is the case, the Commission will need to advise the trustees about whether a merger is possible and whether we can help to facilitate it.

Box 3: Examples of compatibility of objects

3.2 Typical structures in a merger

The most common types of merger are:

• Using existing organisations: this is where one charity assumes the entire undertaking and assets of another. Charity A winds up and passes its property to charity B. A is removed from the Central Register of Charities. B may then wish to take the opportunity to reorganise, restructure and expand its activities. (Box 4a)

Using an existing organisation’s structure

Box 4a: Structure: Using an existing organisation’s structure
• Creating a new organisation: all charities involved wind up and transfer their property to a newly created organisation with similar objectives. Charities A and B pass their remaining assets to a newly formed C. This option is often used to avoid the merger looking like a takeover and can allow the new organisation to have a ‘fresh start’. (Box 4b)

The structure chosen will depend on the legal forms of the charities involved in a merger and the provisions contained in each charity’s governing document.

• Unincorporated charities: can be established using a wide range of legal structures and their governing documents include trust deeds, constitutions, rules, wills, conveyances or Commission Schemes. By their very nature, mergers between unincorporated charities can be more complex to deal with as their governing documents will usually contain a wide variety of provisions and may not always include the powers that are necessary to merge, for example, a dissolution clause. Some governing documents may have objects that are dated in the way they are worded and the trustees may find that the objects are too restrictive to be an effective use of charitable funds.

• Charitable companies: the governing document of a charitable company, a memorandum and articles of association, will usually include a range of powers that will enable it to merge with one or more charities. Mergers between charitable companies tend to be more administratively straightforward because their governing documents are likely to contain the necessary powers to merge. Charitable companies must inform Companies House of a change to their memorandum and articles of association or of their dissolution.
All of a charitable company’s assets must be able to be used for its own general purposes which may be wider than the purposes for which the funds were given (this includes paying creditors in case of liquidation). This means that it cannot hold permanent endowment as part of its general corporate property. However, permanent endowment can be held by a charitable company in a trust (where it is a corporate trustee).

The Commission will be able to provide the trustees with advice on the best way of facilitating a merger for the types of charities described above and we may be able to use our regulatory powers to help.

**Incorporating a charity**

Some charities use merging as an opportunity to change their legal structures. A common example of this is where an unincorporated charity decides that it wants to change its legal status to become a corporate body (a charitable company). This is usually known as ‘incorporating’.

A company structure has an advantage over other common charity structures, such as trusts and associations, in that the law considers it to be a person in the same way as an individual. Therefore a company, like an individual, can own land and enter into contracts in its own name. There are some operational benefits: for example, if the charity holds shares, these can be held in the corporate name, as can the legal title to charity property.

The company will also have ‘limited liability’ which means, in the case of a typical charitable company, that its members are normally only liable for the debts of the company to the extent to which they have undertaken to guarantee them. This is usually a nominal amount which will be stated in the memorandum of association. Incorporation is beneficial in that it provides the directors and members with some protection against potential personal liabilities including claims for breach of contract. In any legal proceedings the company will be sued rather than the trustees or members personally.

A new form of incorporated charity is due to be introduced shortly called the Charitable Incorporated Organisation (CIO). This is a new legal form of incorporation which is designed specifically for charities. For further information, please see our website.

An incorporation can be registered on the Register of Mergers as it falls within the definition of a ‘relevant charity merger’ as defined in the Charities Act 2006. See section 5 for more information about the Register of Mergers.

**Box 5: Incorporating a charity**

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**For further information:**

- Choosing and Preparing a Governing Document (CC22)
- Merger – a model of collaborative working (NCVO)
3.3 Involving the Charity Commission

Achieving a merger may or may not require advice or legal authority from the Commission – this will depend on what the trustees are proposing and whether the powers contained in their charities’ governing documents are sufficient or appropriate (see 2.6).

Additionally, any changes to the objects of a charity will usually need our consent. For a charitable company anything that restricts or directs the way that its property is used will also require our consent.

The table below show the sort of issues that the Commission can help with and those that will be for the charities and their professional advisers to consider.

### Issues needing the Charity Commission’s advice
- legal and constitutional considerations;
- advice on possible merger structures;
- compatibility of objects and the trustees’ case for merger;
- consent for changes in objects and dissolution clauses;
- establishing schemes and orders;
- amendments or additions to governing document powers and provisions.

**Box 6a: Issues needing the Charity Commission’s advice**

### Issues for merging charities to consider
- compliance with other forms of legislation (eg employment/TUPE/pensions);
- contractual negotiations;
- insurance;
- discharge of liabilities;
- use of vesting declarations and their content;
- operational aspects (eg integrating service delivery of merging charities, bringing together staff and communication with the membership);
- accounting;
- pension liabilities;
- IT systems;
- general communications.

**Box 6b: Issues for merging charities to consider**
Charities operating in Scotland

Any charity registered with the Charity Commission that is also registered with the Office of the Scottish Charity Regulator (OSCR) that is intending to merge should contact them at an early stage as OSCR’s consent is needed for the following changes:

- change of name;
- amendment of its charitable purposes;
- amalgamation with another body;
- winding up or dissolution; or
- applying to the court in relation to amending its purposes, amalgamating or winding up.

Box 7: Charities operating in Scotland

For further information:
- Cross-border charity regulation in Scotland on OSCR’s website www.oscr.org.uk.
- English and Welsh Charities www.oscr.org.uk/EnglishandWelshcharities.stm
- Scottish Registration of English and Welsh Charities

3.4 Involving other public bodies

Charities should also consider, as part of the due diligence process, whether any other public body will need to be consulted or involved. Examples include:

- HM Revenue and Customs (HMRC) where the new merger will affect the charity’s tax or trading arrangements;
- The Registrar of Companies where a new company is being created, or an existing one dissolved;
- The Office of Fair Trading (OFT) where on merger the coming together of charity shop or trading activities may be affected by the Fair Trading Act 1973;
- The Criminal Records Bureau (CRB) where a charity is taking on responsibility for overseeing volunteers or staff who require checks;
- Land Registry where land or property is being transferred from one organisation to another;
- Local authorities for a variety of reasons including change of details for obtaining charitable relief from council tax payments, or for public collection licences.

This is not an exhaustive list and will vary according to the charity’s purposes and activities. Contact details for these organisations can be found in section 6.2.
3.5 Transferring and subsequent treatment of a charity’s property

Methods of transferring funds and assets

The method of transfer and subsequent accounting treatment of charitable assets will depend on the powers contained in each charity’s governing documents. The most common methods are:

- **The dissolution clause:** The majority of charity governing documents contain a dissolution clause so that the charity can be wound up. Usually a dissolution clause will provide for the assets of the charity to be passed to another charity with the same or similar objects. Many trustees rely on the dissolution clause when merging their charity with another. Where there is no power to dissolve, we can provide advice on what alternatives there may be.

- **A block grant:** The trustees can elect to transfer all its expendable assets to another charity with similar purposes. It will be furthering its objects by making the grant and, once all its assets have been paid over will, in effect, cease to exist. This method is often used by smaller unincorporated charities.

- **Commission Scheme:** Where a charity’s trusts are too restrictive, the governing document includes a provision which precludes a merger or does not contain a dissolution clause, then we may be able to make a scheme to alter the trusts so that the merger can proceed.

Final accounts

Once this is done, the charity needs to think about their final accounts.

Where a merger is timed to coincide with the financial year end, the closing accounts for the discontinued charity should be submitted to us along with formal notification of its winding up.

Where a merger happens part way through the financial year, there is no requirement to incur the cost of preparing final closing accounts. Instead the trustees of the discontinuing charity may complete our form CSD-1077, which is a declaration form for charities winding up. However, if final closing accounts are prepared, then a copy should be submitted to us along with formal notification of the winding up of the charity.

During the course of making a scheme there will normally be sufficient information about the funds and assets transferring. However, if a merger is timed to coincide with the financial year end, the closing accounts for the discontinued charity should be submitted.

Special funds

The treatment of some classes of funds and assets on transfer must be dealt with in accordance with the rules governing their use and will need to be treated differently from its general funds. The most common examples include:

- **Permanent endowment:** If permanent endowment is held, the trustees will need to identify this separately in any resolution to dissolve. In some cases, the permanent endowment may have a separate body of trustees from the rest of the charity’s property. They would obviously also need to consent to the proposals. The permanent endowment will need to be accounted for separately by the transferee charity. However, if the transferee is a company, it will not be able to hold the permanent endowment as part of its general corporate property. Instead it would be held as a special trust, quite separate from the rest of the charity’s property. The company would be the trustee of the special trust.

- **Restricted funds or special trusts:** The same procedure must be followed as for permanent endowment.

- **Designated funds:** These funds are expendable as they have no legal restriction on their expenditure. However, it may be prudent to negotiate the scope for keeping funds designated for specific purposes, post merger, where this is in the best interest of the charity and its beneficiaries.
**Vesting declarations**

Where one charity is transferring land, buildings, furniture, fixtures and fittings to another, it may use a vesting declaration. This is a deed which transfers the legal title of one charity’s property to another on a specified date. Where vesting declarations are used, the merger must be registered with us (see section 5 The Register of Mergers).

Trustees will need to take professional advice as to the scope and implications of relying on a vesting declaration. For example, it may be necessary to transfer the legal interest in the property prior to using a vesting declaration. The trustees may also need to seek professional advice on the extent to which the use of a vesting declaration affects other statutory provisions, for example transfer under TUPE and pensions arrangements.

We cannot provide advice on the use of vesting declarations.

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**Property vested in the Official Custodian for Charities**

Some charities have property vested in the Official Custodian for Charities (OCC). The OCC is an officer of the Commission whose main role is to hold land for charity trustees. For mergers where a vesting declaration has been used to transfer the title of a charity’s property to the trustees of the transferee charity, there will be no need for the OCC to be formally discharged by the Commission.

For mergers where a vesting declaration has not been used, the legal title to property will need to be changed where any of the charities party to the merger has ceased to exist. The title to the property can be vested in the name of the receiving charity if that is what the trustees wish.

**Box 8: Property vested in the Official Custodian for Charities**

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**3.6 Accounting for a merger**

Charity trustees can decide, probably in conjunction with their professional advisers, whether they wish to account for their merger as a *merger* or an *acquisition*. The substance of what has happened is the deciding factor. Further detail on what accounting solution will be appropriate is contained in Annex 4.
**Case study: Pennoyers**

The trustees of three Norfolk based charities could see the potential for merger and sought advice on how to go about it. The village of Pulham St Mary had a condemned village hall and a derelict school at its centre (which incorporated a 15th century chapel) owned by an educational trust. The enthusiasm and hard work put in by trustees and volunteers secured a £934,000 Heritage Lottery grant towards the £1.5m project to turn the old school into a village centre. The Commission visited the site and advised that a new charitable company with a single body of trustees and objects that encompass village hall purposes with educational and heritage preservation purposes may be the best way forward. Because the chapel was subject to permanent endowment trusts it couldn’t be accounted for as part of the corporate property of the charitable company so the Commission made a Scheme to allow the company to act as trustee of the chapel.

“It was felt that the heart went out of the village when the old school closed and with the village hall condemned things looked bleak”, said trustee Pat Whiteside. The new plans and building work are well underway and in Spring 2010 will deliver a thriving village centre for all to use.

Volunteer project manager for the project, Sheila King said,

“The single line on our project plan entitled ‘Merge Charities’ made it look straightforward, but of course, it wasn’t. The volunteers running the project are ordinary local people, and dealing with the complexities of trust deeds, permanent endowments, potential charitable structures and the like, is well beyond our experience. We found the Charity Commission publications very helpful, and the direct support from our case worker over the last two years has been invaluable in finding a way for the two charities to cooperate to deliver this great community facility. And when we sat down with the Commission to look at their proposed structure, it felt as though someone had finally switched on the light - it all makes perfect sense.”

**For further information:**

- www.pennoyers.org.uk
4. Planning and communicating

**Key questions for trustees**

1. Have we identified an individual to manage the overall process?
2. Do we have a project plan with milestones in place to manage the process?
3. Have we established a project board, committee or group to oversee the project and to link into the respective trustee bodies?
4. What interim governance arrangements should we put in place during the merger process?
5. Have we conducted a stakeholder analysis and established a communications plan that covers all existing and new stakeholders and audiences? This should cover communicating the merger to existing funders and staff.
6. Have we identified the risks associated with merging, such as reputational or operational risks, and put systems in place to mitigate those risks?
7. Have we identified ways to monitor the success of the merger and how it will be evaluated?

4.1 Planning and project management

There are risks, challenges and opportunities involved when merging and charities need to invest time in planning properly. As part of the initial feasibility assessment by trustees, charities should consider:

- reasons for merging;
- objectives;
- impact on beneficiaries and stakeholders;
- costs;
- risks and barriers;
- powers available to them to merge, transfer assets, receive assets.

The importance of good project management and clear decision making arrangements cannot be underestimated. The typical stages in deciding to merge are set out in box 2. Once the decision has been made, charities should develop a project plan and strict timetable with milestones. They should try to anticipate in advance where there may be delays or sticking points.

Even in cases where mergers are administratively straightforward, they can often be complex in terms of organisational and cultural change. It may be useful to consider specialist independent advice and support through all or parts of the process. As with any significant contract, trustees should consider tendering for these professional services to help them merge.
Senior management and trustees will have a key role to play in mergers:

- **Project board or steering group:** Charities should establish a high level project board with senior management and trustee representatives from all charities involved to oversee the development and implementation of the merger and take any relevant decisions. Often the chief executives of the organisations will be involved along with a representative from the board and legal advisers. This can be mirrored at an operational level with staff representatives from both charities who conduct the day to day business associated with the merger.

- **Project manager:** There should be an assigned individual or project manager to manage, oversee and coordinate the overall process. This individual could be employed by one organisation and take on a project management role or may be an external facilitator.

- **Governance arrangements:** Sometimes charities will opt to have interim governance arrangements until the charities have fully merged and a decision has been taken by trustees as to the appropriate governance arrangements of the new organisation.

- **Chief executive’s role:** The role the chief executive will play in a merger will vary. In many cases the chief executive’s contribution is vital. However, while they may play a key role, trustees must remain in control of the overall process. Sometimes a charity’s trustees may pursue a merger which will result in an outcome in which there is no future role for the chief executive. In these instances, the trustees will need to be proactive in driving the merger and also be particularly aware of managing communication with the chief executive, staff and other key stakeholders.

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**For further information:**

- Charity Mergers: Tackling the Issues in Practice (KPMG)

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### 4.2 Communicating effectively

Good communication is vital to the success of a merger. Charities involved need to consider their stakeholders, what information needs to be communicated and when.

A stakeholder analysis enables charities to identify who will be affected by the merger or who may want to comment on and have an interest in the proposals. For example:

- service users/beneficiaries;
- members of the charity;
- staff that may be affected;
- funding organisations or local authorities.

In some cases it may not be in the interests of the charity to consult widely on the merger. This will be a decision for trustees to take.

The communication plan should be linked into the stakeholder analysis and take into account each audience. It should set out how and when to communicate with different stakeholders and partners. For example, the approach to service users will differ from that to charity staff, funding organisations and so on. The communications plan should link to the merger objectives as it will help all stakeholders keep sight of the fact that the merger is in the best interests of the charity and its beneficiaries.
Charity names: As part of communications planning, charities may also want to think about branding. Trustees should give careful consideration to the name of the new charity. Sometimes there is a sense of history or brand attached to a particular charity and it may be damaging, especially in terms of fundraising, if a name is lost. For this reason trustees often choose an amalgam of the old charity names. This can create a feeling of coming together or merging rather than takeover.

When a charity name is considered too valuable to lose then it can continue to be used, post merger, as a working name if the trustees wish. A good example of this occurred in the NSPCC/Childline merger. Childline continues to be used as a working name although the charity itself has merged with the NSPCC. Beneficiaries of Childline have received a seamless service throughout the merger process. The working name appears on the Central Register of Charities alongside the registered name.

4.3 Managing risks

Charities should consider the risks associated with the merger and how best to manage them. Common risks include:

- resources being diverted from existing work to cover the cost of the merger;
- negative impact on public profile if merging with an organisation whose objects, purposes, means of conducting business or reputation is at odds with its own;
- uncertainty with beneficiaries and staff who may be concerned about the reasons for merging or longer term impacts on them.

As with all areas of risk, being able to manage, reduce or eliminate potential problems depends on identifying the issues and finding the appropriate methods.

Charities should also be aware of the major barriers to mergers succeeding. Often it is personal and cultural factors rather than the legal or technical aspects that give rise to problems.

For further information:
- Charities and Risk Management (CC26) (Charity Commission)
- Mix, match, merge (Cass Business School)

4.4 Evaluating the merger

Charities should plan how and when the merger will be evaluated. This is an area that is often overlooked by charities when planning a merger. Clear success measures should be identified from the beginning and used to monitor the merger’s achievements against its original objectives. The evaluation should focus on the overall impact and objectives of the merger and link back to each charity’s original reasons for participating. This in itself can help ensure that the merger stays on track to deliver its objectives and can allow charities to learn lessons for future work and planning. The evaluation can also be useful in helping to justify the original decision.

For further information:
- Charity Evaluation Service (Charity Evaluation Service)
5. The Register of Mergers

5.1 The purpose of the Register

The Charity Commission keeps a public register of charity mergers to ensure that legacies and other gifts left to any charities which ‘disappear’ following a merger will be automatically transferred to the new merged charity. Charities can register their merger with us in order for this to happen. There is, however, an important exception of which they need to be aware (see section 5.2).

5.2 Do all mergers have to be registered?

Registering a merger is compulsory where a vesting declaration is used. In other cases, it’s voluntary. If your charity does not rely on legacy income and the trustees feel it is never likely to receive legacies, then registering the merger is not necessary (unless a vesting declaration has been used).

Where a charity receives or expects significant legacy income, it should consider registering the merger but should take legal advice before deciding to. This is because some legacies can be worded in a way that specifies another recipient for the legacy if the original charity ceases to exist. In these cases, the gift would not automatically transfer to the new charity but go to the person or organisation specified in the will. Only charities that have transferred their funds and thus ceased to exist can enter their merger in the Register of Mergers.

5.3 How to register a merger with the Commission

The charity receiving property from another charity or charities (the transferee) is responsible for notifying us of a merger. You can send the details to us using an online form. The notification will need to let us know:

- the names of the charities involved in the merger;
- the date of transfer of the property;
- a confirmation that arrangements have been made for the discharge of any liabilities of the transferor charity or charities;
- details of any vesting declaration made.

5.4 The Central Register of Charities

The Charity Commission also maintains the Central Register of Charities. In all cases of merger, charities should inform us about the merger in order that we can keep the Register of Charities up to date. Registering a charity is not the same as registering a charity merger.
6. Other information

6.1 Glossary

**Governing document** means any document setting out the charity’s purposes and usually how it is to be administered. It may be a trust deed, constitution, will, conveyance, Royal Charter or Commission Scheme.

**Assets** means the land, buildings, cash, investments and any other property belonging to a charity.

**Trustees** means charity trustees. Charity trustees are the people who, under the charity’s governing document, are responsible for the general control and management of the administration of a charity. In the charity’s governing document they may be called trustees, managing trustees, directors, committee members or governors, or they may be referred to by some other title.

Sometimes a charity also has **custodian** or **holding trustees**, whose function is restricted to holding its property. Custodian or holding trustees have no power to make management decisions and must act on the lawful instructions of the charity trustees.

**Legal authority** is a general term for the method by which the Commission authorises an alteration in the way that a charity operates. This may be an Order, Scheme or other form of consent.

- An **Order** is a legal document made by us which can, for example, confer new powers on a trustee body or appoint or remove trustees.

- A **Scheme** is a legal document made by us that can change any aspect of a charity’s purposes or administrative provisions.

**Permanent endowment** means the property of a charity (including land, buildings, cash or investments) which the trustees cannot spend as if it were income. It must be held permanently, sometimes to be used in furthering the charity’s purposes, sometimes to produce an income for the charity. The trustees cannot normally spend permanent endowment without our authority.

**Restricted funds** are funds subject to specific trusts which may be declared by the donor(s), or with their authority (eg, in a public appeal), but still within the objects of the charity. Restricted funds may be restricted income funds, which are expendable at the discretion of the trustees in furtherance of some particular aspect(s) of the objects of the charity, or they may be capital funds, where the assets are required to be invested, or retained for actual use, rather than expended. Some charities have power to declare specific trusts over unrestricted funds. If such power is available and is exercised, the assets affected will form a restricted fund, and the trustees’ discretion to apply the fund will be legally restricted.

**SORP - The Statement of Recommended Practice: Accounting and reporting by charities** sets out the accounting and reporting framework for all UK charities, except where a more specialised SORP applies.

A **special trust** means funds or property held and administered on its own separate trusts by or on behalf of a main charity for any special purposes of that charity. It follows that the objects of a special trust must be narrower than those of the main charity.

A **stakeholder** means any person or body that has an interest in a charity and in the context of this guidance will usually include a charity’s beneficiaries, its staff and volunteers, its members, its funders and supporters.

A **vesting declaration** is a deed which transfers the title of the property of a charity from the transferor to the transferee.
6.2 Useful organisations

Advisory, Conciliation and Arbitration Service (ACAS)

ACAS aims to improve organisations and working life through better employment relations. They promote best practice in the workplace through easily accessible advice and services and offer independent services for dealing with disputes.

ACAS National (Head Office)
Euston Tower
286 Euston Road
London NW1 3JJ

www.acas.org.uk
tel: 08457 47 47 47

The Baring Foundation

A charity gives money to charities and voluntary organisations pursuing charitable purposes. Its website provides advice and sources of assistance on a wide range of topics of interest to the voluntary sector.

The Baring Foundation
60 London Wall
London EC2M 5TQ

www.baringfoundation.org.uk
e-mail: baring.foundation@uk.ing.com
tel: 020 7767 1348

Bassac

Bassac hosts the Collaboration Benefits programme which provides training and support to help community and voluntary groups develop strong and successful partnerships.

Bassac
33 Corsham Street
London N1 6DR

www.bassac.org.uk
e-mail: info@bassac.org.uk
tel: 0845 241 0375

Cass Centre for Charity Effectiveness

The Cass Centre for Charity Effectiveness (Cass CCE) exists to maximise the effectiveness of organisations and individuals within the voluntary and community sector.

Cass Business School
106 Bunhill Row
London EC1Y 8TZ

www.cass.city.ac.uk/cce/
e-mail: CassCCE@city.ac.uk
tel: +44 (0)20 7040 8781

Charities Evaluation Services (CES)

CES is a charity that provides resources, consultancy, external evaluations and support on quality and evaluation systems for the voluntary sector.

Charities Evaluation Services
4 Coldbath Square
London EC1R 5HL

www.ces-vol.org.uk
e-mail: enquiries@ces-vol.org.uk
tel: 020 7713 5722

Companies House

Companies House incorporates and dissolves limited companies, examines and stores company information delivered under the Companies Act and related legislation, and makes this information available to the public.

Companies House
Crown Way, Maindy
Cardiff CF14 3UZ

www.companieshouse.gov.uk
e-mail: enquiries@companies-house.gov.uk
tel: 0870 333 3636

Criminal Records Bureau

The CRB helps protect children and vulnerable adults by providing a first-class service to support organisations recruiting people into positions of trust.

CRB Registration Team
PO Box 110
Liverpool L69 3EF

www.crb.gov.uk
tel: 0870 90 90 822
The Social Investment Business – Futurebuilders fund

Futurebuilders offer loan financing, often combined with grants and professional support, to third sector organisations that need investment to help them bid for, win and deliver public service contracts.

The Social Investment Business
5th Floor, 6 St Andrew Street
London EC4A 3AE

www.socialinvestmentbusiness.org
email: info@socialinvestmentbusiness.org
tel: 0191 261 5200

HM Revenue and Customs

HMRC ensures the correct tax is paid at the right time. They provide information for charities and CASCs about Gift Aid, Payroll Giving, tax reliefs, VAT and how to complete a Company or Self Assessment tax return.

HM Revenue & Customs Charities
St Johns House
Merton Road
Liverpool L75 1BB

www.hmrc.gov.uk
email: charities@hmrc.gov.uk
tel: 0845 302 0203

Institute for Voluntary Action Research (IVAR)

IVAR works with third sector organisations to offer an innovative response to the challenges of organisation and management faced by third sector organisations.

Institute for Voluntary Action Research (IVAR)
26 Russell Square
Bloomsbury
London WC1B 5DQ

email: enquiries@ivar.org.uk
tel: 020 7631 6608

Intellectual Property Office (UK-IPO)

The IPO is the official government body responsible for Intellectual Property (IP) rights in the United Kingdom. These rights include patents, designs, trade marks and copyright.

UK Intellectual Property Office (UK-IPO)
Concept House
Cardiff Road
Newport
South Wales NP10 8QQ

www.ipo.gov.uk
email: Enquiries@ipo.gov.uk
tel: 0845 9500 505

Land Registry

The Land Register provides access to details of more than 20 million registered properties in England and Wales. The title register includes ownership details and, for most properties which have changed hands since April 2000, the property price information.

Land Registry Head Office
32 Lincoln’s Inn Fields
London WC2A 3PH

www.landregisteronline.gov.uk
email: landregisteronline@landregistry.gsi.gov.uk
tel: 0844 892 0456

National Council for Voluntary Organisations (NCVO)

NCVO provides good-practice information and advice on all aspects of collaborative working for voluntary and community associations.

NCVO
Regent’s Wharf
8 All Saints Street
London N1 9RL

www.ncvo-vol.org.uk
email: ncvo@ncvo-vol.org.uk
tel: 020 7520 2440
National Association for Voluntary and Community Action (NAVCA)
NAVCA is a national body that supports local third sector infrastructure in England.
NAVCA
The Tower
Furnival Square
Sheffield S1 4QL
www.navca.org.uk
tel: 0114 278 6636

The Office of the Scottish Charity Regulator (OSCR)
OSCR is the charity regulator for Scotland.
Office of the Scottish Charity Regulator (OSCR)
2nd Floor
Quadrant House
9 Riverside Drive
Dundee DD1 4NY
www.oscr.org.uk
email: info@oscr.org.uk.
tel: 01382 220446

Office of Fair Trading
Enforces consumer protection law and competition law, reviews proposed mergers and conducts market studies.
Office of Fair Trading
Fleetbank House
2-6 Salisbury Square
London EC4Y 8JX
www.oft.gov.uk
email: enquiries@oft.gsi.gov.uk
tel: 08454 04 05 06

Office for Civil Society (OCS)
OCS leads work across government to support the environment for a thriving third sector, enabling the sector to campaign for change, deliver public services, promote social enterprise and strengthen communities.
Office of the Third Sector
2nd Floor, Admiralty Arch, South Side
The Mall
London SW1A 2WH
www.cabinetoffice.gov.uk/third_sector
email: OTS.info@cabinet-office.x.gsi.gov.uk
tel: 020 7276 6400

Small Charities Coalition
The Small Charities Coalition exists to help small charities access the skills, experience and resources they need to achieve their aims. They also match small charities with other organisations to increase resources or improve knowledge and skills.
24 Stephenson Way
London NW1 2DP
www.smallcharities.org.uk
email: info@smallcharities.org.uk
tel: 0207 391 4812

University of Liverpool - Charity Law Unit
The main focus of the Charity Law Unit is on researching the law as it affects the charitable sector and makes the results of that research available to charities and their advisers.
www.liv.ac.uk/law/clu/index.htm
tel: 151 794 2462

Volunteering England
Volunteering England is a charity committed to supporting and enabling volunteering. It is a very useful and comprehensive source of information and advice on all aspects of volunteering.
Volunteering England
Regents Wharf
8 All Saints Street
London N1 9RL
www.volunteering.org.uk
email: volunteering@volunteeringengland.org
tel: 0845 305 6979
6.3 Useful publications and online services

Charity Commission

*Online services:*
- Charity Commission Register of Mergers
- Charity Commission Register of Charities

*Guidance and resources:*
- Choosing and Preparing a Governing Document (CC22)
- Collaborative Working and Mergers: An introduction (CC34)
- Charities and Risk Management (CC26)
- Charities and Public Service Delivery (CC37)
- Due Diligence Checklist
- Charity Reporting and Accounting: The essentials April 2009 (CC15b)
- Big Board Talk
- Trustees, trading and tax: How charities may lawfully trade (CC35)
- Charities working internationally

Other sources of information

The following publications, resources, tools and case studies, many of which are signposted in the toolkit, may be of interest for charities planning to merge with others.

*Research reports:*
- Anatomy of a merger – the Cumbria experience (NAVCA)
- Legal issues in Charity Mergers (Charity Law Unit, Liverpool University)
- Key Findings on Voluntary Sector Mergers (Institute for Voluntary Sector Research)
- Merging Interests (The Baring Foundation)
- Charity Mergers: Tackling Issues in Practice (KPMG)
- What place for mergers between charities? (NPC)

*Resources and models for merger:*
- Due diligence demystified: What it is and how you manage it (NCVO)
- Tools for Success (Cass Business School)
- Merger – A model of collaborative working (Collaborative Working Unit, NCVO)
- English and Welsh charities (OSCR)
- Cross-border charity regulation in Scotland (OSCR)
- Seeking charitable status in Scotland (OSCR)
- Mix, match, merge (Cass Business School)

*Online services:*
- Partner Zone
- Small Charities Coalition
- Charity Evaluation Services (CES)
- NCVO
Approaching the Charity Commission about mergers

Is Charity Commission consent needed for a merger?

The majority of charity mergers do not need Charity Commission consent. A charity’s governing document will usually contain the powers needed to allow a charity to merge with another. But we must be involved if a charity does not have the power it needs to proceed with a merger proposal, or if its governing document specifically requires our consent.

If this is the case or if you need our advice, you should contact the Commission. In order to consider a proposal we will need to understand the proposed merger. The questions below set out the information we will need from you. You may also wish to send us supporting documents to illustrate the case for merger, such as business or project plans.

It would be helpful if you could approach us well in advance of the merger target date so that we can check in good time whether any specific legal authority is required.

Please remember to include the charity’s name and registered number in your correspondence and send details to:

enquiries@charitycommission.gov.uk

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**Background and contact details**

1. Name, registered number(s), a contact name and telephone number for all the charities involved.

2. Will a working name be required? If yes, please provide details.
Charitable objects

3. How are the charities’ objects compatible?
4. How would each charity further its charitable objects by merging? Highlight similarities and overlaps in activities or services to beneficiaries.

Decision making and advice

5. Have the trustees of all the charities involved in the merger made a collective decision to proceed? If so, please confirm and provide details.
6. Have the trustees followed the charity’s governing document in making their decision?
7. Do any of the charities concerned in the merger have members? If yes, have the provisions of the governing document relating to members and voting been followed?
8. Have all the charities involved begun formal due diligence exercises? Has this raised any major issues?
9. Have the charities concerned taken professional advice? If yes, has this raised any issues?
10. Is legal authority from the Charity Commission required in order for the merger to proceed?

Transferring assets

11. Do any of the constituent charities have property vested in the Official Custodian?
12. Do you wish the Official Custodian to hold title to the property of the successor charity?
13. Please provide details of any permanent endowment held.

For further information about collaboration and mergers, please see our publications Collaborative Working and Mergers: An introduction (CC34) or Choosing to Collaborate: Helping you succeed.
Mergers

20 questions trustees need to ask

The merger of charities means two or more separate charities coming together to form one organisation. In such cases, either a new charity is formed to carry on the work or take on the assets of the original charities or one charity assumes control of another.

Purpose of the checklist

This checklist is intended as a simple guide to the typical issues trustees need to think about when considering merging. They should ensure that the merger best meets the needs of the beneficiaries and makes the best use of their charitable resources. They must act prudently in the interests of their charity and in accordance with the governing document and the requirements of charity law and other legislation.

We have designed the checklist to be suitable for all charities to use. Not all questions will be relevant to every charity. This checklist should be looked at alongside the Charity Commission’s publications:

- Choosing to collaborate: Helping you succeed
- Collaborative Working and Mergers: An introduction (CC34)

We are happy to advise trustees about mergers where a charity has insufficient powers or its governing document specifically requires our consent. Please refer to the form ‘Approaching the Charity Commission about mergers’ which can be found on our website www.charitycommission.gov.uk

### Considering merger

1. Is a merger in the best interests of our charity and its beneficiaries? Will it improve the quality of service we offer by, for example, delivering cost savings, increasing income or making best use of our resources?

2. Is our proposed partner charity/ies compatible in terms of its objects, strategic vision, culture, values, governance arrangements, organisational structures and funding base?

3. Have we approached our stakeholders and beneficiaries for their views? If not, how and when are we going to?

4. What will be the risks and benefits for our charity of a formal merger? Have we considered the wider impacts on our charity?

5. Are there any other forms of collaborative working we could explore that might achieve the same benefits?

6. Have we estimated the full cost of merging? This should include issues such as staff time, rebranding, professional fees, relocation and unanticipated costs.

7. Does our charity have members? If yes, does our governing document require the consent of the members in order to merge?

8. Are we carrying out a due diligence exercise, can we do it in-house or do we need professional advice?
Financial and legal considerations

9. Do we have the relevant legal powers to achieve our plan or will we need help from the Charity Commission?

10. Have we decided on a legal structure for the merged charities?

11. Are we taking the appropriate professional advice and in what areas?

12. Are there any employment issues we need to consider? These could include issues such as TUPE (Transfer of Undertakings (Protection of Employment)) requirements, pensions liabilities and compliance with employment law.

13. Are there restrictions on our charity’s sources of income? These could include special trusts, restricted funds or permanent endowments.

Planning and communicating

14. Have we identified an individual to manage the overall process?

15. Do we have a project plan with milestones in place to manage the process?

16. Have we established a project board, committee or group to oversee the project and to link into the respective trustee bodies?

17. What interim governance arrangements should we put in place during the merger process?

18. Have we conducted a stakeholder analysis and established a communications plan that covers all existing and new stakeholders and audiences? This should cover communicating the merger to existing funders and staff.

19. Have we identified the risks associated with merging, such as reputational or operational risks, and put systems in place to mitigate those risks?

20. Have we identified ways to monitor the success of the merger and how it will be evaluated?

_L_ means there is a specific legal or regulatory requirement. Trustees and the charity must comply with these requirements.

This checklist forms part of the Big Board Talk series. For more information please see our website www.charitycommission.gov.uk
Due diligence checklist

What is due diligence?

‘Due diligence’ is a phrase used to describe the steps organisations take to assure themselves that a merger or complex collaboration is in their best interests. The result of a due diligence exercise is that a charity has full knowledge of the organisation they seek to merge or work with (ie there are no surprises).

The costs of commissioning due diligence work are a proper use of charitable funds, but should be forecast at the outset and regularly reviewed to ensure they remain proportionate to the risks involved.

Due diligence checks fall into three main categories:

- commercial;
- financial;
- legal.

The nature of the checks should be proportionate to the:

- size and nature of the proposal;
- amount of income and expenditure involved;
- nature of the existing and planned activities.

A more rigorous exercise may be necessary where charities have one or more of the following:

- complex service delivery arrangements;
- high profile or sensitive work;
- links with affiliated charities;
- operations in a number of geographical locations;
- one or more trading subsidiaries;
- extensive property holdings and assets;
- restricted funds or permanent endowments.

Trustees’ role

Trustees are responsible for deciding on the appropriate level of due diligence required when considering a merger with another charity/ies or a complex collaboration. They have a legal duty to act prudently. When planning a proposed merger or contractual collaborative arrangement, they should ensure they have identified any potential risks to their charity before entering into any agreement.

Depending on their initial assessment, trustees may require professional advice to ensure that there is an appropriate level of due diligence.

About this checklist

The following checklist is a guide to the areas to review in a due diligence exercise. It is intended to be of use to trustees in understanding the due diligence exercise.
## Commercial and strategic

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<td>What are the reasons for merging? What benefit will merging bring to beneficiaries?</td>
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<tr>
<td>Charitable objects</td>
<td>Review charitable objects.</td>
<td>Are the charitable objects compatible?</td>
</tr>
<tr>
<td>Fundraising strategy</td>
<td>Review amount raised in the last two years and compare with budget.</td>
<td>Is the effectiveness of the fundraising strategy reviewed against a predetermined programme?</td>
</tr>
<tr>
<td>Donors and funders</td>
<td>Consult with existing donors and funders about merger. Review other sources of finance and support.</td>
<td>Will they continue to support the proposed merged charity?</td>
</tr>
<tr>
<td>Beneficiaries</td>
<td>Review existing and potential beneficiaries.</td>
<td>In the long term, as a result of the merger, will the number of beneficiaries increase?</td>
</tr>
<tr>
<td>Trustees and management</td>
<td>Review CVs and contracts of employment for chief executives and senior management. Get CVs of trustees. Compare current provision with future need.</td>
<td>Is there sufficient trustee / management experience in different disciplines for the merged charity?</td>
</tr>
<tr>
<td>Organisational structure</td>
<td>Review organisation charts and staff handbooks.</td>
<td>Are the organisational structures of the charities compatible?</td>
</tr>
<tr>
<td>Governance</td>
<td>Review current governance mechanisms</td>
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<tr>
<td>Effectiveness of board meetings</td>
<td>Review minutes of board meetings. Review minutes relating to financial information.</td>
<td>Are there recurring issues in board minutes which indicate an issue that is not being properly addressed? Are minutes and papers well presented especially regarding financial information? Are management accounts providing relevant and necessary information available to trustees and operating managers?</td>
</tr>
<tr>
<td>Risk management</td>
<td>Review risk registers and appropriate board minutes.</td>
<td>Are there significant risks that need to be resolved before merging?</td>
</tr>
<tr>
<td>Information technology</td>
<td>Review information technology systems.</td>
<td>Are systems compatible? How might existing IT systems be used in the merged charity? Is there scope to consolidate?</td>
</tr>
<tr>
<td>Stakeholders opinion</td>
<td>Consult with stakeholders about merger.</td>
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</tr>
<tr>
<td>Competitive position</td>
<td>Identify charities with similar objectives.</td>
<td>Will these charities prove to be too competitive and prevent the merged charities from achieving their objectives?</td>
</tr>
<tr>
<td>SWOT analysis</td>
<td>Review any existing SWOT analysis or conduct a SWOT analysis.</td>
<td>What issues does this raise?</td>
</tr>
</tbody>
</table>
### Financial

**a. Accounts**

<table>
<thead>
<tr>
<th>Area to review</th>
<th>What to do</th>
<th>How to use this information / Questions to ask</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Annual financial statements</strong></td>
<td>Identify the main sources of income and categories of expenditure for the last 2/3 years.</td>
<td>What are the trends for the last 2/3 years of excess income over expenditure and excess assets over liabilities? This will confirm the charity’s solvency.</td>
</tr>
<tr>
<td></td>
<td>Review the excess of assets over liabilities for the last 2/3 years.</td>
<td></td>
</tr>
<tr>
<td><strong>Management accounts</strong></td>
<td>Compare</td>
<td>Are periodic management accounts reliable for decision making? Is current budgeting/forecasting reliable and realistic? What are the reasons for any variances which have arisen?</td>
</tr>
<tr>
<td></td>
<td>• accuracy of year end management accounts with annual financial statements for that year</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• management accounts with budget or latest forecast.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• management accounts and annual financial statements for previous 2 years with budget/forecast for following 2 years.</td>
<td></td>
</tr>
<tr>
<td><strong>Cash flow</strong></td>
<td>Review cash flow and look for trends that show sustainability.</td>
<td>Are there any potential deficits that need to be monitored arising from timing differences in future cash flow?</td>
</tr>
<tr>
<td><strong>Accounting standards</strong></td>
<td>Confirm compliance with the Statement of Recommended Practice, Accounting and Reporting (SORP) for charities, Standard Statements of Accounting Practice (SSAP) and Financial Reporting Standards (FRS).</td>
<td>Are there any departures from the SORP, SSAPs and FRSs?</td>
</tr>
<tr>
<td><strong>Accounting policies and internal financial controls</strong></td>
<td>Compare accounting policies and internal financial controls with your own.</td>
<td>Are there any differences which make the organisations incompatible? What fits well? How effective are internal financial controls and do any areas need to be reviewed?</td>
</tr>
<tr>
<td><strong>Management letter from auditors</strong></td>
<td>Review auditor’s copies of management letters from the last three years. These should include the charity’s responses.</td>
<td>Is there anything of concern in the auditors or charities comments? Are there any possible defects in internal controls?</td>
</tr>
</tbody>
</table>
### b. Commitments and assets

<table>
<thead>
<tr>
<th>Area to review</th>
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<th>How to use this information / Questions to ask</th>
</tr>
</thead>
<tbody>
<tr>
<td>Future funding</td>
<td>Review plans for funding in next 2/3 years.</td>
<td>Is it likely that future funding will be achieved?</td>
</tr>
<tr>
<td>Funding of projects</td>
<td>Check that the practice of full cost recovery is being followed and that budgets allow for a small surplus to be added to reserves</td>
<td>What is the risk of undertaking projects where full cost recovery is not achievable and what will be the effect if those projects have to be subsidised from unrestricted funds?</td>
</tr>
<tr>
<td>Property and dilapidations</td>
<td>Obtain a list of properties. Perform a Land Registry search and obtain title deeds for freehold and leasehold properties. Check if cost exceeds market value in any cases. Review leases for dilapidation clauses.</td>
<td>Could losses arise if property has to be disposed of? Will the costs be very high if any leases are surrendered?</td>
</tr>
<tr>
<td>Fixtures and fittings</td>
<td>Get a register of fixed assets and reconcile the figures to the accounts. Check on sample basis fixtures and fittings.</td>
<td>Does the register represent the assets fairly? Are there assets which will be used in the merged organisation? Will some assets have to be disposed of at a loss?</td>
</tr>
<tr>
<td>Investments</td>
<td>Obtain a list of costs and value of investments.</td>
<td>Can you verify the legal title by checking certificates or other legal evidence?</td>
</tr>
<tr>
<td>Stocks</td>
<td>Obtain a list of stock and values. Attend a physical stock-take if the value of the stock is material.</td>
<td>Is there slow moving and obsolete stock that might lead to an overvaluation of stock?</td>
</tr>
<tr>
<td>Debtors</td>
<td>Obtain a list of debtors and amounts owed. Get direct third party verification on material amounts especially grant debtors.</td>
<td>Are adequate provisions in place for doubtful debts?</td>
</tr>
<tr>
<td>Prepayments</td>
<td>Obtain a list of prepayments. Verify a sample of prepayments.</td>
<td>Where prepayments relate to agreements that will be terminated does the value of the prepayment need to be reduced?</td>
</tr>
<tr>
<td>Bank</td>
<td>Obtain a list of bank balance(s) and check bank(s) reconciliations.</td>
<td>Are bank balances accurate? Are all bank accounts accounted for?</td>
</tr>
<tr>
<td>Creditors</td>
<td>Obtain a list of creditors and the amounts owing. Enquire into and consider getting direct third party verification on material and long standing amounts.</td>
<td>Are all creditors genuinely still owed or could there be problems with the records?</td>
</tr>
<tr>
<td>Debt and guarantees</td>
<td>Obtain details of terms for all debt, secured and unsecured and any guarantees. Review timing of debt repayments as part of cash flow analysis.</td>
<td>Can any terms, covenants and guarantees remain in place following merger?</td>
</tr>
<tr>
<td>Accruals</td>
<td>Obtain a list of accruals. Verify a sample.</td>
<td>Are potential liabilities being calculated on a reasonable basis and is the list complete?</td>
</tr>
<tr>
<td>Intangibles</td>
<td>Get details of patents, licences, brands and other intellectual property rights and goodwill together with copies of relevant agreements.</td>
<td>Is the valuation of intangibles reasonable?</td>
</tr>
<tr>
<td>Pension schemes</td>
<td>Specialist advice must be taken from the pension provider and other relevant professional advisers.</td>
<td>What sort of liabilities may arise if membership of the scheme is terminated either by staff leaving or transferring or by the merging organisation ceasing to exist?</td>
</tr>
</tbody>
</table>
### Tax

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<tr>
<td>Income tax and national insurance</td>
<td>Examine the payroll and find out the normal monthly liability for PAYE.</td>
<td>Is the amount owed for tax and National Insurance the payment for one month or for longer? Do there appear to be any overpayments and, if so, are they recoverable?</td>
</tr>
<tr>
<td>Corporate tax</td>
<td>Check that there is no liability to pay corporation tax on any form of trading or relating to non-charitable expenditure.</td>
<td>Discuss with tax advisers.</td>
</tr>
<tr>
<td>VAT</td>
<td>Check whether the organisation is VAT registered or should be. If so, check its procedures with regard to irrecoverable VAT.</td>
<td>Discuss with tax advisers.</td>
</tr>
<tr>
<td>Gift Aid</td>
<td>Obtain a list of donations on which gift aid is being recovered. Check on a sample basis whether the documentation is correct to enable recoveries be made.</td>
<td>Would an HMRC gift aid audit uncover liabilities for gift aid being reclaimed in error?</td>
</tr>
</tbody>
</table>

### Legal

<table>
<thead>
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</thead>
<tbody>
<tr>
<td>Power to merge</td>
<td>Get copies of current governing documents. Review the legal basis on which merger will proceed.</td>
<td>Is there power for the charities to merge in the governing documents?</td>
</tr>
<tr>
<td>Charity Commission involvement</td>
<td>Consider the need for Commission advice or authority.</td>
<td>Is there uncertainty about how to proceed? Would Charity Commission involvement assist?</td>
</tr>
<tr>
<td>TUPE and contracts of employment</td>
<td>Review contracts of employment and seek professional advice.</td>
<td>What are the implications for transferring staff including contracts of employment?</td>
</tr>
<tr>
<td>Property</td>
<td>Consider various clauses of leases such as dilapidation clauses and seek professional advice.</td>
<td>What are the implications of these? Act on professional advice</td>
</tr>
<tr>
<td>Intellectual property</td>
<td>Obtain details of patents, trade marks and other intellectual property rights and seek professional advice.</td>
<td>What are the implications of these? Act on professional advice</td>
</tr>
<tr>
<td>Other legal contracts</td>
<td>Review existing contracts.</td>
<td>Act on professional advice</td>
</tr>
<tr>
<td>Public service delivery</td>
<td>Review existing contracts and contact awarding agency. Find out the views of the awarding agency to merger.</td>
<td>Act on professional advice</td>
</tr>
<tr>
<td>Pensions</td>
<td>Review schemes and identify any issues. Determine if a deemed withdrawal or cessation event will be triggered and contact the Pensions Regulator.</td>
<td>Act on professional advice</td>
</tr>
<tr>
<td>Insurance</td>
<td>Obtain details of all insurance policies and make contact with insurers.</td>
<td>What are the insurance requirements of the merged charity?</td>
</tr>
<tr>
<td>Permanent endowment</td>
<td>Obtain relevant trust deeds and other documentation.</td>
<td>Are the proposed arrangements for holding the permanent endowment legally sound? Act on professional advice</td>
</tr>
<tr>
<td>Legacies</td>
<td>Consider reliance on future legacy income.</td>
<td>Is there a need to register the merger with the Commission?</td>
</tr>
</tbody>
</table>
Accounting for a merger

Charity trustees can decide, probably in conjunction with their professional advisers, whether they wish to account for their merger as a **merger** or an **acquisition**.

The accounting solution chosen is important because if the acquisition method is chosen the ‘gain’ or ‘loss’ on acquisition of the ‘bundle of assets and liabilities’ is shown in the Statement of Financial Activities of the reporting charity which ‘acquired’ them. Whereas under merger accounting an ‘opening balance sheet’ is created from the initial assets and liabilities of the participating parties as though the merged entity always existed and so no initial ‘gain’ or ‘loss’ is recognised.

Trustees should decide on the form of accounting which best describes the transaction. The terms acquisition accounting and merger accounting should not sway that decision - the substance of what has happened is the deciding factor.

The charity SORP does not identify any specific treatment and so the accounting should follow Financial Reporting Standard 6 (FRS6), which sets out the criteria for determining merger accounting and acquisition accounting.

The Accounting Standards Board in their Interpretation of the Statement of Principles for Not-for-Profit entities (the Interpretation) states that where a gain arises from a not for profit combination, this should be shown as a gain in the ‘statement of financial performance’. The statement of financial performance for a charity is its Statement of Financial Activities. Chapter 8 of the Interpretation also states that:

a. an acquisition is reflected in the consolidated financial statements as if the acquirer purchased the acquiree’s assets and liabilities as a bundle of assets and liabilities on the open market; and

b. a merger is reflected in the consolidated financial statements as if the new reporting entity, comprising all the parties to the transaction, had always existed.

There are basically three criteria from FRS6 which determine whether in the case of charities there is a merger. These are:

- none of the charities is portrayed as the acquirer or acquired;
- all of the charities participate in establishing the management of the merged charity and in selecting management personnel;
- the relative sizes of the merging charities are not so disparate that one of them dominates the merged charity by virtue of its relative size.

If any of these criteria for merger accounting are not met by the relevant charities then acquisition accounting should be applied in accordance with FRS6.
Examples of merger and acquisition accounting

• If Charity B, which is bordering on insolvency, merges with Charity A in order to rescue Charity B so its work can continue, this may best be viewed as an acquisition for accounting purposes.

• If two equivalently sized charities, which are both solvent and going concerns, agree to merge to become more effective and save costs then this might be better described as a merger for accounting purposes.

The distinctions between merger and acquisition accounting

<table>
<thead>
<tr>
<th>Merger accounting</th>
<th>Acquisition accounting</th>
</tr>
</thead>
<tbody>
<tr>
<td>the assets and liabilities of the merged charities should be brought into the merged accounts at the figures at which they stand in the accounts of the individual charities (subject to uniformity of accounting policies);</td>
<td>the assets and liabilities of the acquired charities should be brought into the accounts at the fair values, as determined by FRS7, as the date of acquisition (with any net gain or loss recognised in the Statement of Financial Activities of the reporting charity);</td>
</tr>
<tr>
<td>the income and expenditure of the merged charity must be included for the entire financial year; this includes the period before the merger;</td>
<td>the income and expenditure of the acquired charities must be included only from the date of acquisition;</td>
</tr>
<tr>
<td>the merged accounts must show corresponding amounts relating to the previous financial year;</td>
<td>the fundamental principle of acquisition accounting is that the date of acquisition determines the accounting reference point for the acquired charities;</td>
</tr>
<tr>
<td>the fundamental principle of merger accounting is that the accounts of the merged charity are prepared as if the merger had always been in existence;</td>
<td></td>
</tr>
</tbody>
</table>

For further information:

• Accounting and Reporting by Charities: Statement of Recommended Practice (SORP)
You can obtain large-print versions of this publication from the Charity Commission on 0845 300 0218