

Charity Commission

Collaborative Working & Mergers

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The Commission



- The Commission is established by law as the regulator and registrar of charities in England and Wales
- Our aim is to provide the best possible regulation of these charities in order to increase charities' efficiency and effectiveness and public confidence and trust in them

Commission Policy – Collaboration and Mergers



- In summary;
- Encourage trustees to do more and better for their beneficiaries
- It is not part of our agenda to push particular charities towards merger or collaboration
- Trustee decision whether or not to merge or collaborate

Charities Act 2006



- Relevant charity mergers defined:
 1. One charity passing its assets to another charity and then dissolving
 2. Two or more charities passing their assets to a new charity and then dissolving
- Register of Mergers

What's the difference between Merger and Collaborative Working?



- A merger involves the disappearance of one or more charities
- For collaborations the charities remain but work together under an agreement, e.g. a contract or memorandum of understanding. The type of agreement charities opt for will depend on the scale of the collaboration – could be a contract for large scale collaborations or less formal agreement for smaller scale

What's the difference between Merger and Collaborative Working?



- For merger charities need to have compatible objects
- For collaboration a charity needs to be satisfied that collaborating furthers its objects, that the resources devoted are reasonable in relation to the extent to which the objects are furthered, and that any benefit to others is incidental

What is a Charity?



- To be a charity an organisation must have purposes which are **exclusively** charitable.
- The Charities Act 2006 defines a charitable purpose as one that falls within the list of 13 descriptions and is for the public benefit
- Guidance on our website:
www.charitycommission.gov.uk

What is a Social Enterprise Organisation?



- Social Enterprise organisations have primarily social objectives and principally reinvest surpluses in the business or community.
- Rather than maximising shareholder value their aim is to generate profit to further their social and environmental goals

What is a Community Interest Company (CIC)?



- A CIC exists for community benefit and its assets are retained for its particular community purposes
- A CIC is a legal form specifically designed to provide a purpose built legal framework and brand identity for Social Enterprises that want to adopt the limited company form

What is a Community Interest Company (CIC)?



- Individuals can invest in a CIC and receive dividends which are subject to a statutory cap.
- Office of the Regulator of Community Interest companies:
www.cicregulator.gov.uk

Charities and collaboration with companies



- A charity can collaborate with a Social Enterprise (SE) or Community Interest Company (CIC) but cannot be converted into one.
- Any collaborative working arrangement should be in the direct furtherance of the charity's purposes/objectives
- A charities independence needs to be preserved when collaborating with other organisations

Charities and collaboration with companies



- Robust governance controls need to be in place to oversee the collaboration
- If a cross over in trusteeship or directorship exists between a charity and a CIC/SE any conflict of interest must be managed carefully
 - conflict of interest policy
- If in doubt - contact the Commission:
enquiries@charitycommission.gov.uk

What is a Charitable Trading Company?



- Charity trading organisations are not charities in themselves but exist to provide income for their charity
- Profits from the trading company are transferred to the charity under a covenant, free of corporation tax
- A charity trading company can work with a SE/CIC which may or may not have an association with a charity
- Any cross over of directors/trustees needs robust governance controls in place

Charity Commission Mergers Unit – where are we now?



- Climate for merger and collaborative working in the sector
- Economic downturn could result in more mergers/collaborations
- Increase in more complex collaborative working arrangements between differing organisations

Aspects of Good Practice – our advice



- The main barrier to successful merger and collaboration – personality/communications issues
- There needs to be good planning, communication and project management methodology
- Due diligence should be put in place by all parties

Aspects of Good Practice – our advice



- Charities need to contact us as early as possible in the process where constitutional advice or legal authority is required

Office of the Third Sector – Modernisation Fund Roadshows



- £16.5 million – to support viable third sector organisations to access specialist services to restructure and become more efficient
- To fund specialist legal, financial and employment advice and guidance that organisations require to merge or collaborate

Issues raised by charities



- We are a CIC and want to become a charity for grant funding purposes
- We are a charity and want to work with or form a CIC, how should this be structured?
- What is the difference between a CIC, Social Enterprise Company and a trading company?
– confusion as to where charitable status fits
- Difficulties due to personality and communication problems

Issues raised by charities



- Don't know where to start
- Don't have the staff resource to look at the possibilities
- The subject is daunting and complex
- Lack of awareness of Governing Documents and the role of trustees

Issues raised by charities



- Small charities with incomes below £150K do not qualify for the Modernisation Fund, but provide vital services – where do we get funding to survive?
Funding Central now available through NCVO
- Sector needs a brokerage scheme to find potential partners - **Find a Partner** now available through NCVO
- Lack of negotiating skills with commissioning – feel pressurised by funders to merge or collaborate

Trends and Issues



- **Statistics** – reasons for merger 58% Service Delivery reasons, 37% Solvency and 5% Combination of the two
- **Research report – mergers and collaborations May 2009**
 - 447 telephone interviews with charities that made collaborative working and merger enquiries with the Commission over the past 3 years
 - only 9% of charities have considered collaboration
 - over 90% said their merger was successful

Mergers & Collaborative Working Toolkits



- Toolkits for charities – intended to encourage informed decision making
- Covers constitutional aspects, due diligence themes and issues
- Available on website from September www.charitycommission.gov.uk