Merger

A model of collaborative working

How this model can help

This is one of a series of models covering the different ways that voluntary or community organisations can work together. It is aimed at chief executives, managers and trustees. This model outlines how organisations handle the merger process and describes good practice in key areas. Case studies illustrate voluntary sector experience of merger.

This guidance is no substitute for legal advice.

It is useful for voluntary and community organisations asking:

- What forms can merger take?
- How do we decide if merger is right for us?
- What should we consider during the merger process?
- How can we lay the groundwork for the merged organisation?

For more detail on the case studies, please visit www.ncvo-vol.org.uk/merger

Mergers in the voluntary and community sector

What is a merger?

Merger is where two or more organisations formally combine to form one organisation. The term **merger** has no precise legal definition and is used to cover a number of different processes. Some mergers may also be referred to as **takeovers**.

A variation on merger occurs where a parent organisation governs a group of subsidiaries in a **group structure** – one organisation may become a holding company for another organisation/s. Group structures combine some of the elements of merger, but the subsidiaries can retain substantial independence.

For more on group stuctures, please visit www.ncvo-vol.org.uk/collaborate

Bridge House Trust
CORPORATION OF LONDON
The Baring Foundation
LLOYDS TSB FOUNDATIONS

The Collaborative Working Unit is supported by the Baring Foundation, the Bridge House Trust and the Lloyds TSB Foundation.

March 2006

CASE STUDY

City of Wells Almshouses

Wells Old Almshouses (WOA) and Llewellyn, Charles and Harper's Almshouse Trust (LCH) merged in 2004 to become City of Wells Almshouses. One of the drivers was the difficulty that the trusts faced in finding suitable new trustees. Moreover, some trustees served on the boards of both.

Merger working party

A merger working party was set up in recognition of the commitment required by the process and to provide a mechanism for making recommendations to the trustees of both trusts. The working party comprised the Chair and another trustee from each organisation, with the Secretary of WOA undertaking day to day work on the merger. The other trustees stood ready to give advice on their particular areas of expertise.

Agreeing how to progress

To avoid the risk of misunderstandings, the working party prepared a Memorandum of Understanding which was agreed by both sets of trustees. It outlined:

- the expected advantages of the merger
- how the residents would be consulted to reduce uncertainty
- how the key stakeholders would be involved – the Charity Commission & Housing Corporation in particular
- the role of the working party
- the part to be played by all trustees until the merger took effect
- that professional costs would be shared equally between the two trusts

Why do voluntary and community organisations merge?

The decision to merge should be driven by consideration of whether merging will improve outcomes for beneficiaries by helping an organisation better fulfil its aims. There is a growing interest in merger among voluntary and community organisations in response to a combination of internal and external factors. Internal drivers include:

- the desire to provide more or better services to beneficiaries
- the need to increase efficiency through better use of resources
- preventing duplication of services
- financial difficulties
- raising public profile or boosting income

- loss of key staff or trustees such as a chief executive or founder trustee
- 'survival' & 'rescue' – an organisation in jeopardy merges with another with similar objectives so that its services continue

External drivers include:

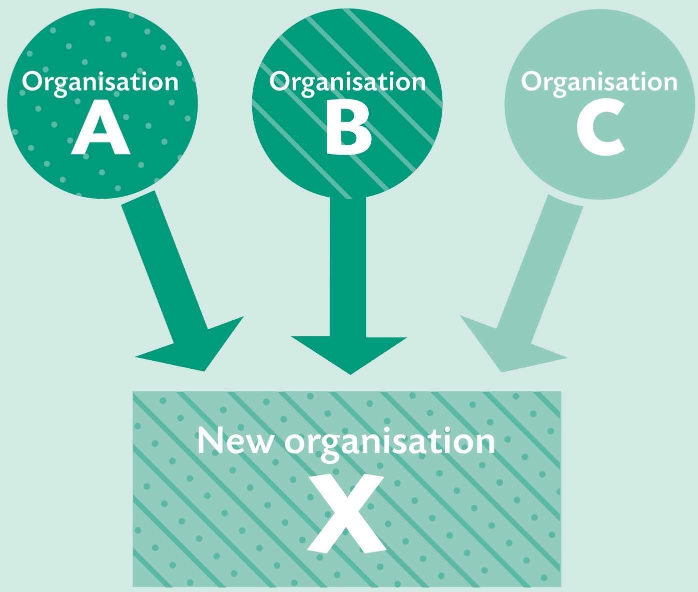
- pressure from funders to reduce duplication
- government encouragement
- competition with similar organisations
- stakeholder opinion
- public perception of an overcrowded voluntary sector

What kinds of merger are there?

Mergers can take a variety of forms. The most common types are:

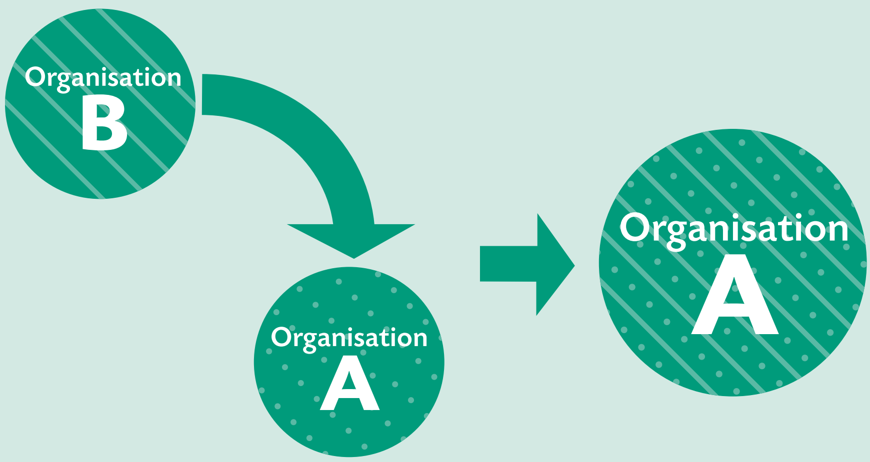
Full merger

Both/all organisations transfer their staff, assets and activities to a new organisation with similar objectives and then the original organisations wind up. See below.



Merger leading to a new organisation

Organisation A continues, perhaps with some adaptations of its name and structure. Organisation B (and C etc) transfers its staff, assets and activities to Organisation A and then winds up. See below.



Merger using an existing organisation's structure

Group structure

In a group structure, a parent organisation governs a group of subsidiary organisations which retain their own legal identities.

One example of a group structure is where Organisation A becomes a holding company for Organisation B. This structure can be used to maintain the services Organisation B provides while protecting Organisation A from any associated risks arising from Organisation B by creating a 'firewall' between the organisations. There may be some transfer of senior staff, assets or projects, but Organisation B continues to operate as a separate legal body, albeit one controlled by the trustees of Organisation A. The relationship may continue indefinitely or may be an interim stage prior to full merger.

Deciding to merge

Who makes the decision?

The idea of merger is usually raised by an organisation's Chief Executive or trustees (members of the board or management committee). It is trustees' role to ensure their organisation acts legally and they take final responsibility for the decision to merge. Trustees must act in the best interests of beneficiaries.

Can you merge?

You will need to check whether your governing document includes a power to merge or a dissolution clause. If merger is not mentioned or if you are uncertain whether it is permitted, seek advice from the Charity Commission or a solicitor. You may have an obligation to consult your members about a proposed merger.

Should you merge?

You must be sure that merger will help you achieve the objectives of your organisation. Your potential merger partner/s should have compatible objectives to yours so that merger allows you to continue current work. Merger should only go ahead if it will mean more or better services for your beneficiaries or the continuation of existing services which would otherwise be lost.

CASE STUDY

Volunteering England – three into one

Volunteering England was created in 2004 through the merger of the Consortium on Opportunities for Volunteering, the National Centre for Volunteering and Volunteer Development England.

A new brand

The merger steering group were committed to equal status for all three organisations so the merger created a new organisation rather than two of the three organisations merging into the third. They created a new national brand for Volunteering England. The process of building this identity helped the new organisation to feel real to its stakeholders and demonstrated that the merged body would be more than the sum of its parts.

New Chief Executive

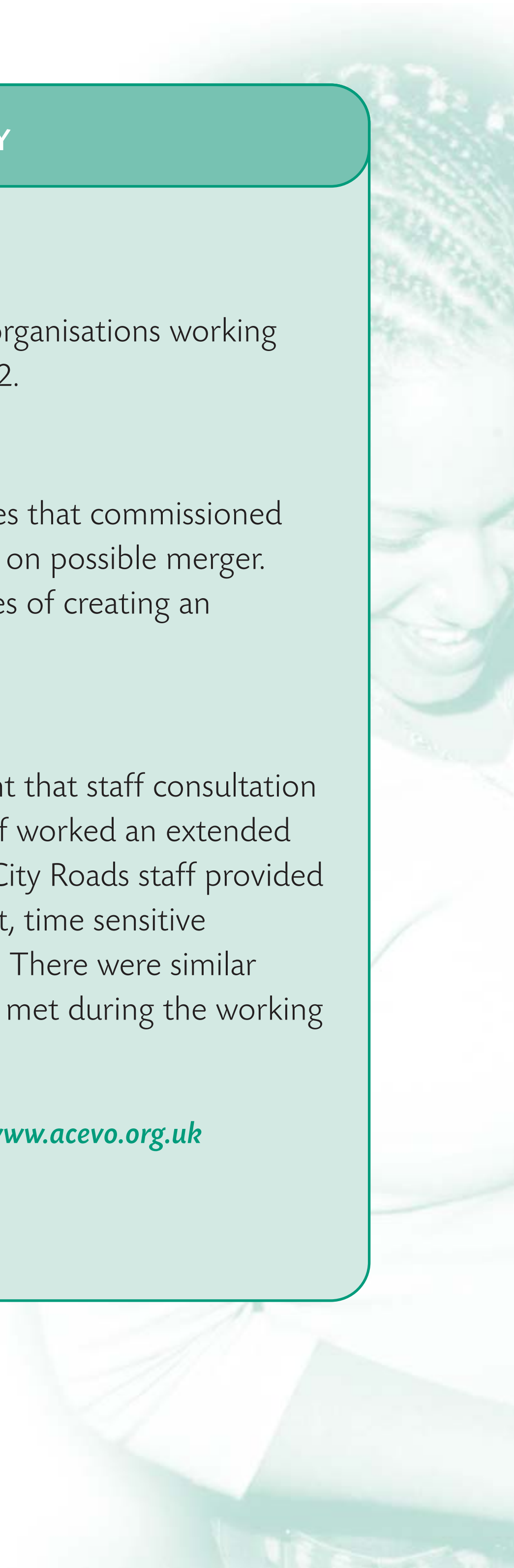
Volunteering England's Chief Executive was appointed after an internal selection process. Appointing an internal candidate provided consistency for stakeholders as he brought to the new organisation his knowledge of decisions made during the merger process. Once appointed, the new Chief Executive formed a focal point for leadership and management decisions.

www.volunteering.org.uk

Where there are no legal barriers to merger, there may still be 'deal breakers' which act as blocks. For example, if a key funder is against merger, an organisation risks financial instability if it goes ahead. Establish early on whether these are absolute barriers or issues that could be resolved.

You may decide that the time is not right for merger and that a form of collaborative working would better meet your current aims. You should regularly review your options and could revisit the idea of merger in a few years' time.

NCVO's *Should you collaborate? Key questions* is a checklist to help organisations explore whether collaboration or merger would help them meet their aims.



CASE STUDY

The Odyssey Trust

Milton House and City Roads were two medium sized London organisations working with drug users. They merged to form the Odyssey Trust in 2002.

Sounding out commissioners

Both organisations had supportive relationships with the agencies that commissioned their services. In 2001 they asked key commissioners their views on possible merger. The commissioners were behind the idea and saw the advantages of creating an organisation with a broader range of activities.

Working style

The two sets of staff had different working patterns which meant that staff consultation and communication needed careful handling. Milton House staff worked an extended 9-5 pattern with regular staff meetings and much use of email. City Roads staff provided a service 24/7 so all-staff meetings were rare. Instead, important, time sensitive messages were relayed by post to the homes of City Roads staff. There were similar differences in the culture of the two boards: City Roads trustees met during the working day; Milton House in the evening.

Edited from ACEVO's **Managing mergers** *which can be bought from www.acevo.org.uk or call 0845 345 8481.*

www.odysseytrust.org

Merger process

Planning the process

Mergers work best when the process is led by people who are good communicators and change managers and who can articulate a vision for the merged organisation and carry people along with them in achieving it.

A merger typically passes through a number of stages. Planning ahead and setting a timetable is crucial to ensure the process goes smoothly. Use professional advice – you will need a solicitor and may find a neutral facilitator helpful during discussions.

Who leads on merger?

Once you have decided to merge, it is useful to create a small steering group comprising the chairs of the merging organisations, at least one other trustee from each organisation and each organisation's chief executive, in addition to any advisors or consultants. In large organisations, other senior staff may be included. An implementation group of staff can act on decisions taken by the steering group and will get future colleagues starting to work together.

Timescale and budget

Set a target date for merging, then start working to make it happen. Delay in getting going may make the merger process harder. The process is time consuming. Time costs money and if staff are working on merger they are not working on their ongoing tasks.

- How much time will be required from different staff?
- Could you employ temporary staff to maintain pace on ongoing work?
- How much consultancy help do you need?
- At what stages will you need to call on professional input?

Set a budget for the merger which includes costs such as staff time, legal and professional fees, relocation costs and redundancy payments.

- How will these costs be shared between the merging organisations?
- Can you get funding to support the merger process?

What role do regulators play?

There are few constitutional barriers to merger that cannot be overcome with the help of the appropriate regulator.

The merging organisations will need to draft the new organisation's governing document. Options include forming a new entity with a new governing document or amending the governing document of one of the existing organisations. Merging organisations should seek advice from their regulator or professional advisors on the content of the governing document and registration procedures for the new organisation.

The **Charity Commission** takes a neutral stance on merger in individual cases, whilst encouraging charities to consider what is best for their beneficiaries. Most mergers do not require Charity Commission consent, but the Commission recommends that charities seek their advice early regarding legal and regulatory issues.

The Charity Commission publishes guidance on *Collaborative Working and Mergers* www.charitycommission.gov.uk/publications

The **Housing Corporation** is also keen to promote and assist appropriate mergers. www.housingcorp.gov.uk/index.htm

The **Registrar of Companies** registers limited companies www.companieshouse.gov.uk

The **Financial Services Authority** registers Industrial and Provident Societies www.fsa.gov.uk

Voluntary and community organisations may have **additional regulators** that should be consulted before merger takes place. For instance, the re-registration of care or medical facilities following a merger can trigger substantial additional regulatory compliance costs so these should be checked early on.

What is due diligence?

Due diligence is the exercise which unearths the information that organisations need so that they can decide whether to go ahead with merger. The scope of due diligence varies according to the size and complexity of the organisations involved. Some organisations carry out due diligence themselves. In other cases, professionals working for each organisation examine the others to ensure that they fully understand how a potential merger partner works and to identify any risks, liabilities or other issues which could derail the merged organisation.

Due diligence looks at areas including:

- current financial position & future viability of the merged organisation
- property ownership & occupation
- assets, e.g. restricted funds or permanent endowment
- income sources, e.g. committed giving, grant funding, contracts held or under negotiation
- employment practice
- policies & procedures

CASE STUDY

CLIC Sargent

CLIC (Cancer Leukaemia in Childhood) and Sargent Cancer Care for Children merged to become CLIC Sargent in January 2005.

Timescale

It was decided to go through the merger process swiftly to reduce uncertainty for staff and stakeholders and to stabilise the new organisation quickly. A merger project group, comprising trustees and CEOs from both charities and an external consultant, helped the charities devise the timetable.

July 2004	merger first mooted at informal meeting of the two Chairs
Late July 2004	both trustee boards and CEOs discuss the idea
August 2004	directors and selected managers brought into discussion
August 2004	due diligence process begins
October 2004	decision made to merge
November 2004	CEO recruited
November 2004	merger announced to staff
January 2005	merger takes place
April 2005	CLIC Sargent publically launched

CLIC Sargent is keen to share its experience of merger. Please contact louise.gage@clicsargent.org.uk on 020 8752 2800

www.clicsargent.org.uk

Inadequate annual accounting by an organisation can be a barrier to merger going ahead. Once the decision to merge has been made, organisations are advised to take professional advice on handling the accounting issues raised by merger as this is a complex area.

Assessing financial problems

Sometimes merger takes place to enable an organisation in financial difficulties to survive so that its services for beneficiaries continue. Efficiency gains are made through sharing a back office. Organisations taking over others for this reason should ensure that they have compatible objectives so that merger will have no adverse effect on their own beneficiaries. Organisations being taken over in this way should decide what compromises they are prepared to make.

However, many mergers of this sort do not go forward once the scale of the financial problems are known. It is vital that due diligence uncovers both the scale of any financial problems and whether they are:

- the result of an unexpected or historic and non-recurring problem
- symptomatic of long-term problems such as inadequate funding or high costs
- uncertain and potentially more extensive than initially indicated

It may be possible to overcome such problems with additional funds or by adopting a form of group structure which creates a firewall between an organisation with associated risks and its parent organisation.

Where an organisation that is being taken over has a pension deficit, this is a liability which could mean a major outlay for the merged organisation. Professional advice should be taken.

CASE STUDY

Abandoned merger

As two small charities with similar aims, Group A approached Group B to discuss a possible merger. Both organisations agreed to have meetings for a year to explore key issues, all of which were resolved reasonably well. At the end of the year, Group B asked Group A which of their trustees would be part of the new merged organisation. Group A said that almost all their trustees wanted to step down for a variety of reasons.

Group B were surprised and suggested that they should 'take over' Group A rather than 'merge' with them. They used the term 'takeover' as the merged organisation would have no trustees from Group A. However, this change in language altered how Group A viewed the proposal, although the actual merger plan had not changed. Group A therefore refused the proposed 'takeover' and decided to continue their activities as a separate organisation.

When should we tell staff?

"When considering a merger, it's important to strike a balance between being honest with staff, but not worrying them about their future unnecessarily. We chose to be open and laid it all on the table at an early stage which meant we did lose some staff."

Shaks Ghosh, Chief Executive, Crisis

Staff and volunteers are key assets. How far do you want them to be involved? It may be sensible to keep the exploratory stages of merger confidential. The merger may not happen and the organisations risk losing staff. Organisations may also risk reputational damage if it becomes known that they were involved in an abortive merger.

The stage at which all staff are told of merger plans depends on the culture of the merging organisations, but legal obligations and the duty to consult staff mean that sufficient time should be allowed for consultation. Once the announcement is made, it is important to keep staff and volunteers informed and involved as the merger process unfolds. Staff may be anxious about compulsory redundancies or relocation. Regular communication is key to preventing low morale and a lack of information can fuel unhelpful rumours.

Transfer of Undertakings Regulations (TUPE)

These regulations govern the position of staff transferred from one organisation to another. They concern the rights of employees to protection for their terms and conditions and transfer employment claims to the new employer. Legal risks and obligations to staff need to be thoroughly understood so legal advice should be taken early on.

An organisation accepting staff will be taking on obligations which could include:

- employment tribunal claims
- trade union recognition agreements
- externally controlled pay structures
- pension and redundancy obligations

TUPE protection continues after a merger, but does not prevent restructuring or reducing the size of the workforce to achieve financial savings. Again, legal advice needs to be taken on this and on any move to alter contracts of employment or other benefits.

Involving stakeholders

While some funders may be keen to see mergers, other stakeholders may have conflicting interests which should be addressed early on. For instance, if vital operational premises are held on advantageous leases which can only be assigned with the landlord's consent, not getting this consent could seriously obstruct a merger.

- What effect will merger have on the interests of your different stakeholder groups? Consider beneficiaries or service users, volunteers, donors and funders, as well as staff and members.
- Which stakeholders need to be consulted before the decision to merge is made and who should be informed afterwards? For example, agencies to whom you are contracted will need to be notified of changes such as your new registered charity or limited company numbers before merger takes place.

Good practice

Governance & leadership

The period leading up to a merger can be a confusing time so it is important that clear roles are agreed both to ensure that the process goes smoothly and to provide some stability during the transition. The composition of the board and the appointment of a chief executive for the merged organisation can be a hurdle to the process moving forward.

What **interim governance** arrangements do you need? The interim board could comprise all the trustees of the merging organisations or some of them. Giving thought to its composition may help you decide what the merged board should look like further down the line.

What criteria will you use to form the **new board**? Some trustees may see merger as a natural time to leave. This could also be a good time to refresh the board and ensure it is a manageable size, reflects its diverse stakeholder groups and includes a mix of skills. A trustee selection process is useful to help produce a shortlist of candidates.

The appointment of a **chief executive** can be most difficult when trustees aim to appoint from the existing postholders. People associated with a particular organisation may have strong loyalty to its existing chief executive and the institutional knowledge they would bring with them into their new role if appointed. Appointing the chief executive early reduces uncertainty and gives focus to the leadership of the merged organisation.

Brand and identity

Organisations are often very proud of their brand, although it can be difficult to measure the value that it brings to their work. Organisational identity can be more of an issue where one organisation is absorbed into another, but if brand is considered a valuable asset, it can be preserved within a merged organisation. As an independent organisation, Working For A Charity built up a recognised brand which continues now that the organisation is part of NCVO. Volunteering England, a merger of three organisations, found it helpful to signal the fresh start with a new name and refer to 'creating a new organisation' rather than merging.

Rebranding will mean additional expenditure for new stationery etc and may involve consultancy costs. You may also consider advertising to explain and promote the new organisation.

Culture

"Out of those charities that have merged, the most common barrier was considered to be culture clash, experienced in the case of 52% of respondents."

Mergers and Collaborations charities survey 2004, conducted by Nabarro Nathanson and PricewaterhouseCoopers in association with Charity Finance

Although it is hard to quantify, organisational culture is important to voluntary and community organisations and should be factored into your decision-making. Mergers have faltered over differences in culture and cultural incompatibility can mean that assimilation will be difficult if a merger goes ahead. Merging organisations facing this challenge need to ask themselves whether cultural difference is a reason not to merge. Perhaps organisational culture needs to change because it is currently causing the organisation to fail to meet its aims.

However, incompatible culture is sometimes also used as a smokescreen to disguise issues such as:

- the chairs or chief executives of the merging organisations not getting on
- disagreement over the chief executive of the merged organisation
- governance differences between organisations, such as a strongly democratic membership organisation and an organisation where trustees select themselves
- different decision-making cultures, for example a flat structured organisation and one that is more hierarchical
- different attitudes to service delivery

In assessing organisational culture, consider:

- attitude to risk
- flexibility and tolerance of change
- decision making approach
- level of participation by staff and beneficiaries
- management style
- involvement of trustees
- remuneration and reward systems

Team working pre-merger

"We found social events as important as meetings so that people could find out what made each other tick!"

Dorit Braun, Chief Executive, Parentline Plus

Encouraging staff to start working together while still in separate organisations can help integration post-merger. Working as the team you will become can help you identify and address areas of tension and begin to create the merged organisation.

Trustees and staff should work together, as well as in staff-only and trustee-only groups, to work out a single vision, mission and strategic aims. Looking at these areas together is not only a step towards a new business plan, but could help produce a sense of shared ownership in the future of the new organisation.

Post-merger

"In a true merger, you're aiming to create a new culture, not have one organisation's culture taking over another's. You can't enforce culture, but you can take steps to foster a new culture, building from the ground up. The work you've done on the vision and values for the merged organisation is a good starting point."

Myles Bremner, Director of Planning & Performance Management, CLIC Sargent

The day that legal merger takes place does not mark the end of the merger process. It can be helpful to maintain your steering group to oversee the process of combining the cultures and working practices of each organisaton as well as to continue dealing with the legal and financial matters arising from merger. Tasks at this stage are likely to focus on:

- building beneficiary and other stakeholders' confidence in the merged organisation
- integrating policies, procedures and systems, e.g. health & safety, databases
- embedding working style and culture, e.g. hours of work, use of meetings, dress code
- delivering any service improvements or cost savings
- addressing any issues arising from the transition

To strengthen the effectiveness of new colleagues, you may consider:

- training
- work shadowing
- social events – so staff, trustees & volunteers can meet each other in a less formal setting

Reviewing merger

Set a date for the steering group to take stock and encourage staff to reflect on how well they are adapting to change. Areas to review include:

- how the process has worked
- its impact on your ability to achieve your objectives
- its effect on the management and functioning of the organisation
- stakeholders' experience since the merger
- the issues requiring further action

CASE STUDY

Family Welfare Association absorbs National Newpin projects

Why & how did merger happen?

National Newpin was a small charity providing services to parents and children through projects across the UK. When it faced financial difficulties, some of its funders were prepared to help Newpin's services continue so, after discussion, Family Welfare Association (FWA), a large national charity, agreed that it would take over the operation of most of Newpin's services. The majority of Newpin's projects and the associated staff were transferred to FWA in 2004 and Newpin was then liquidated.

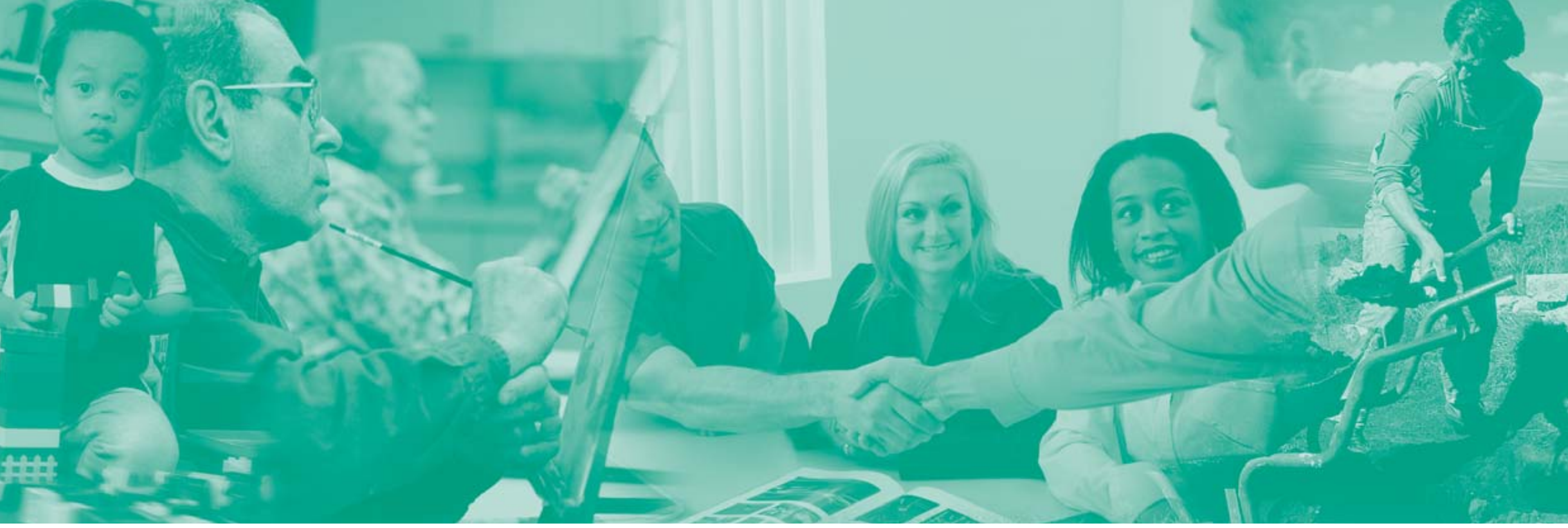
Investing time

To protect Newpin's innovative projects, FWA accepted and managed the risks involved in this merger. Doing so took a significant investment of staff, trustee and professional time and this investment continues post-merger. Newpin and FWA were different sizes with different internal procedures. FWA now realises that more time should have been spent on inducting Newpin staff into FWA's internal systems as soon as merger took place.

Premises

Newpin's projects used several premises, mostly rented to them by local authorities. Because the local authorities were also commissioning Newpin's services, these tenancy arrangements were often informal and not well-documented. As a result, the transfer of arrangements to FWA was time-consuming for both FWA and their solicitors.

www.fwa.org.uk



Further advice and information

Collaborative Working Unit

email collaborate@ncvo-vol.org.uk
telephone 020 7520 2440
www.ncvo-vol.org.uk/collaborate – see Links for further publications on merger

Charity Commission contact centre

telephone 0845 300 0218
email enquiries@charitycommission.gsi.gov.uk
www.charitycommission.gov.uk

NCVO's HelpDesk

telephone 0800 2 798 798
textphone 0800 01 88 111
email helpdesk@askncvo.org.uk

Local support

Councils for Voluntary Service www.nacvs.org.uk/cvsdir/
Rural Community Councils www.acre.org.uk/rcclinks.htm

Charity Finance Directors' Group

email info@cfdg.org.uk
telephone: 0845 345 3192
www.cfdg.org.uk

Disclaimer

NCVO cannot accept liability arising from reliance on this information. It is for guidance only and should not replace legal advice.

Model written by: James Sinclair Taylor, head of the Charity Unit at Russell-Cooke Solicitors, and the CWU

Picture credits: Volunteering England/Santiago Arribas Pena & Chalky Whyte and BTCV/Graham Burns

NCVO's CWU

The Collaborative Working Unit offers information and advice to help voluntary and community organisations make decisions about whether and how to work collaboratively. It serves the managers and trustees of voluntary organisations and infrastructure bodies as well as engaging with funders and policy makers.

Collaborative Working Unit
NCVO, Regent's Wharf, 8 All Saints Street, London N1 9RL