

Checklist for mergers



What is a merger?

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. Charities merge in order to better meet the needs of their beneficiaries and to make the best use of their charitable funds and property.

The process involved will depend on the legal structures of the charities and the powers contained in each of their governing documents.

Trustees' role

Trustees 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.

About the checklist

This checklist is intended as a simple guide to the typical issues trustees will need to think about when considering merging. It should be read with the Charity Commissions publication *Collaborative Working and Mergers* (CC34) which sets out the types of merger, legal issues that may arise and when to involve the Commission. It is not exhaustive and charities should take professional advice as necessary.

Charities should also undergo a 'due diligence' exercise in advance of merging. This should give them the information they need to determine whether to proceed with the merger. Further explanation of 'due diligence' is set out in the *Checklist for due diligence*.

The role of the Charity Commission

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 '*Requesting assistance from the Charity Commission about mergers*'.

Deciding to merge

1. Is merging in the best interests of the charity and its beneficiaries? Will it improve outcomes for beneficiaries by improving the quality of service, delivering cost savings, increasing income or in other ways?
2. Is the proposed partner charity compatible with your charity in terms of its charitable objects, strategic vision, culture, values, governance arrangements, organisational structures and funding base?
3. What are the reasons for the proposed merger? Have you explored other models of collaborative working?
4. What will or might your charity gain and lose from merging?
5. Are you or do you plan to approach stakeholders for their views, particularly service users?

Financial and legal considerations

6. Are powers available to your charity to merge? Is it in the governing document?
7. Does either charity have members? If yes, do the governing documents require the consent of members in order to merge?
8. Are you taking professional legal and financial advice?
9. Are you carrying out a formal 'due diligence' exercise?
10. What employment issues are there to consider? These could include issues such as TUPE requirements, pensions liabilities and compliance with employment law.
11. Are there restrictions on the sources of income of either charity? These could include special trusts, restricted funds or permanent endowments.

Planning and communicating a merger

12. Have you estimated the full cost of merging? This should include costs such as staff time, rebranding, professional fees, relocation and unanticipated costs.
13. What interim governance arrangements will you put in place during the merger process?
14. Have you identified an individual to manage the overall process?
15. Have you established a project board, committee or group to oversee the project and to link into the respective trustee bodies?
16. Have you set out a project plan with milestones to manage the process?
17. Have you identified the risks associated with merging, such as reputational or operational risks, and put systems in place to mitigate those risks?
18. Have you 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 all existing funders and staff.
19. Have you identified clear measures to monitor the success of the merger and how will it be evaluated?