

- a shared vision or mission and understanding of respective cultures and expectations;
- appropriate research and background checks, and for large-scale mergers, a full disclosure or due diligence exercise;
- appropriate constitutional arrangements, such as a power to amalgamate, which will enable the charity to work efficiently in the longer term; and
- setting aside appropriate levels of funding for the merger, with the actual and anticipated costs regularly reviewed.

#### Charities using intermediary organisations

- such as an established Non Government Organisation (NGO) or a local charity, in an international collaboration, should draw up a formal agreement setting out the arrangement.

#### Charities which are part of a group structure are more likely to realise the benefits of the group structure if they:

- have clear and transparent relationships with the other organisations within the group;
- spend their charitable funds in furtherance of their objects and are aware of the limits to which a charity can support a non charitable organisation within a group; and
- have group governance arrangements which enable each subsidiary's trustees to take decisions solely in the interests of

their charity and its users or beneficiaries, and in accordance with the overall operational policy determined by the parent company.

#### Trustees of charities involved in a national structure with members should, as good practice:

- be clear about the characteristics of their distinctive governance structure;
- seek to maximise the benefits which national membership can bring through collaborative working; and
- develop transparency and clear communication within the structure.

#### The role of the Charity Commission

The role of the Charity Commission is to encourage charities to consider joint working, up to and including merger in appropriate cases, where they can increase efficiency and provide better service to charity users or beneficiaries. We provide extensive advisory and enabling support to charities pursuing a merger, including where necessary relevant authority for charities entering into collaborative arrangements or mergers.

We welcome the recommendation within the Strategy Unit review *Private Action, Public Benefit* that the Charity Commission should provide specific advice to facilitate mergers, and we will seek to expand our capacity for this work. We will also draw upon the findings of this regulatory report and, in discussion with the sector, we will produce specific advice on charity mergers.

#### About the report

The report on charities' collaborative working and mergers has been compiled using evidence from the Charity Commission's records and an examination of our case files. We have also spoken to numerous charities, and carried out a formal survey.

To obtain a copy of the full report **Collaborative Working and Mergers (RS4)** you can either:

- view and print from the publications section of our website at [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk); or
- call our Contact Centre staff on 0870 333 0123 (between 8.30am to 6.00pm on weekdays) or (at other times) our answer phone order line on 01823 345427 for a printed copy.

Some people believe that there are too many charities competing for too few funds and that a significant amount of charitable resource could be saved if more charities pooled their resources and worked together.<sup>1</sup>

The charity sector has grown organically and in an unplanned way. Inevitably some areas of activity will see a concentration of charities, whilst in other areas there may be gaps.

The majority of charities are relatively small, local organisations that rely entirely on the unpaid help of their trustees and other volunteers. They may have similar purposes to many other charities but they are all serving different communities. The nature of these charities suggests that there are less likely to be significant areas of overlap, duplication or scope for cost-cutting, although collaborative working can, in some circumstances, still bring benefits for these charities.

It is the much larger, professionally run, charities which, because of their size, tend to face charges of duplication, waste and over-aggressive fund-raising. Whilst there are some clear advantages to be had from a healthy plurality of charities, which are constantly refreshed by new charities pursuing new activities, there are also big benefits of public confidence and support to be had from showing collaborative, as opposed to over-competitive, instincts.

Diversity and independence are important strengths. But for many charities, joint working or merger can make for more effective use of resources in meeting users' needs, and an increase in such activity

should be good for public confidence in charity. It is not the Charity Commission's role to push particular charities - they themselves must decide what is in the best interests of their users. But the Commission believes that all charities should consider seriously and imaginatively whether there are ways in which they could do more and better for their users by working together. Examples of good practice in this area range from shared helplines, shared service delivery, combined grant administration and joint marketing or purchasing initiatives, to partial or full mergers.

There are risks involved when entering into any relationship, and proper planning is needed alongside a detailed assessment of likely benefits. The report explores the opportunities and challenges of collaborative working and mergers and makes recommendations to enable well-planned partnerships to flourish.

#### Findings

Over a fifth (22%) of all charities currently work collaboratively according to our survey, and 5% of charities exist as a result of a merger in the past ten years. 13% of large charities have either merged or actively considered a merger in the last 10 years.<sup>2</sup> Our casework experience and survey results show that collaborative working can bring a wide range of benefits to charities and their beneficiaries or users. Sharing knowledge (59%), joint service delivery (49%), and sharing resources to increase efficiency (40%) are the most common reasons given for collaboration.<sup>3</sup> Charities that work collaboratively are

<sup>1</sup> A Survey of Public Attitudes to the Charity Commission (1999) found that a majority of those questioned felt that there were too many charities.

<sup>2</sup> Large charities are defined as those with an income between £250,000 and £999,999 income per annum.

<sup>3</sup> There could be more than one motive behind a collaborative venture, hence the percentages quoted add up to more than 100%.

enthusiasts for such arrangements, and are more likely to participate in several collaborations. They are also more likely to be larger charities and grant or contract funded. Conversely, 78% of charities, particularly smaller charities, do not have any collaborative working arrangements with other charities.

Previous research has shown that measuring or demonstrating the benefits of collaboration and mergers is a tricky area, as there are a number of factors which can affect the end result.<sup>4</sup> However, approximately a third of charities report an improvement as a result of collaboration, with improved service delivery the main area of benefit. Collaborative working arrangements also show a high degree of diversity, with charities that work in very different areas sharing their skills and experience for mutual benefit. Only a tiny proportion of charities felt that their position had got worse as a result of collaboration.

Our casework experience and the survey show that clarity of expectations and open communication are key factors behind successful collaborations and mergers. Transparent governance arrangements are particularly important for charities working within group structures or national structures with members.

The most common motivations for charities seeking a merger were: to increase efficiency (54%); as a way of rescuing a charity in difficulties (44%); and to prevent duplication or to improve services (42%). Service delivery was again the main area of benefit in a merger, with 44% of charities reporting an improvement. Whilst mergers appear, overall, to have a neutral impact for over one in three charities, very few charities feel they are worse off as a result of a merger.

There are few legal barriers to working collaboratively or to seeking a merger and the costs of exploring or participating in such arrangements represent an acceptable use of charitable funds. As the Cabinet Office review comments, the Charity Commission plays a key and helpful role for trustees and their charities to facilitate collaborative working and mergers when these arrangements are in the interests of the charity or its users.<sup>5</sup> Consultation with the Charity Commission at an early stage can help to achieve a smooth and efficient process in dealing with the legal and regulatory issues, and help to ensure a successful partnership. The main report contains casework examples of our role.

### The Charity Commission's casework experience

The key issues the Charity Commission encounters in relation to collaborative working and mergers are where trustees:

- Are seeking guidance on the possibilities of collaborative working or mergers as a means of:
  - improving their efficiency and effectiveness in the services they provide for their beneficiaries or users;
  - addressing financial difficulties; and
  - reducing fundraising or administration costs.
- Would like to work collaboratively or to enter a merger but do not know which charity or charities to approach.
- Seek the Commission's advice on the process to follow, particularly where complex governance or constitutional arrangements exist, or conversely

- do not consult the Charity Commission and other relevant regulators in good time to determine whether their assets can be used in a collaboration, or whether authority is required for a merger.
- Do not establish an appropriate level of contractual agreement to govern the arrangement, or ensure that their charitable assets are used for the proper purpose.
- Do not establish a shared vision of the merged charity and, as a consequence, differences in culture or mission derail the merger.
- Ask for guidance on what factors to take into account, including research and appropriate background checks (due diligence exercises) to ascertain the nature and status of the charity or charities with which they are merging.

### Recommendations

Recommendations arising from our data, casework experience and a survey of charities are summarised below.

#### The Home Office (Active Community Unit) should:

- promote in any forthcoming charity legislation a package of legal measures that will facilitate mergers amongst charities.

#### Sector professionals and umbrella bodies should:

- consider whether there are areas of charitable activity that could be managed more efficiently. They should also consider whether there are areas of over provision, or duplication of

resources which do not serve the interests of beneficiaries or users. The bodies should develop possible solutions to assist these charities, such as creating a specialist unit which quantifies and considers ways in which to promote the benefits and reduce the risks of collaborative working and mergers; and

- develop a range of due diligence models for different types and size of merger.

#### As good practice, trustees should:

- be alive to the potential benefits their charity and its users or beneficiaries might gain from collaborative working arrangements and mergers. They should carry out regular reviews to explore their strategic position and possible partnership arrangements.
- be aware of the key success factors to collaborative working, which include:
  - arrangements which value each party's independence;
  - compatible activities and organisational structures;
  - a clear definition of what each party is responsible and liable for and the extent to which any one party can make binding commitments;
  - agreements which are proportionate to the relative risks and complexity of the collaboration; and
  - a termination clause in formal contracts;
- consider consultation or collaborative working with charities specialising in diversity and equality issues as a way of promoting equal access to services.
- be aware of the key success factors to mergers, which include:

<sup>4</sup> For example, see Audit Commission/Housing Corporation (2001) *Group Dynamics: Group Structures and Registered Social Landlords*, London.

<sup>5</sup> Cabinet Office, Strategy Unit, (2002) *Private Action, Public Benefit*.