ncvo

Collaborative Working

Should you collaborate?

Key questions

'...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.'

– Charity Commission, 'Collaborative Working and Mergers' (RS4) 2003

What is collaborative working?

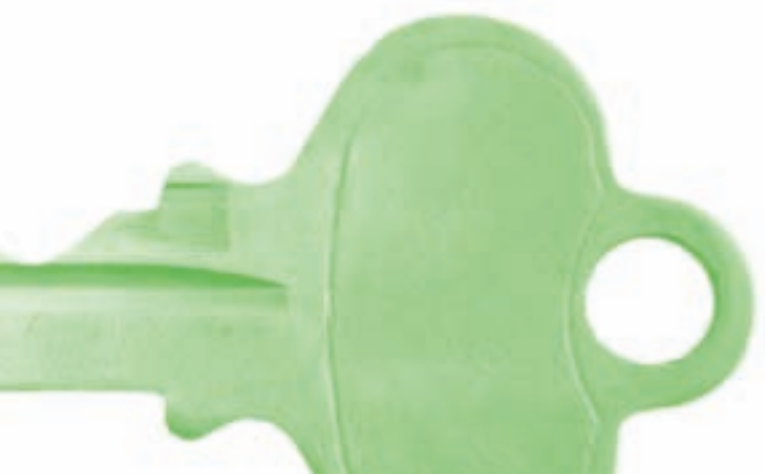
NCVO's Collaborative Working Unit defines collaborative working as partnership between two or more voluntary organisations. Organisations can work together in a spectrum of ways from informal networks, through joint delivery of projects to full merger. Collaborative working can last for a fixed time or be permanent.

How this checklist can help

This checklist aims to help you to decide whether to embark on collaborative working by compiling key issues for exploration. It is aimed at those considering arrangements at the more formal end of the collaborative working spectrum and involving a considerable investment of resources. Every situation is different so this checklist identifies general issues to consider. **It is not a substitute for legal advice.** Many of the points below apply to both collaborative working and merger. Some of them refer only to merger and this is indicated.

Look before you leap

Your decision-making process should encourage you to think through all the implications before you start working collaboratively. With planning, you can manage the risks. Consideration of what is best for your beneficiaries should underlie all your thinking. Allow yourself enough time to make an informed decision for your organisation. It is better to identify obstacles early and decide not to proceed than to call a halt once you have already invested resources, time and effort in a new partnership venture.



First questions

- What are you hoping to achieve by collaborating with another organisation?
- Are you sure that collaborative working is the best way to achieve this aim?
- Who proposed the idea? Do they have a vested interest?
- Do your Trustees and Chief Executive support the idea?
- Does it fit within your organisation's charitable objects as stated in your governing document?
- Do your plans for collaborative working fit your strategic vision, values and current priorities?

Continued overleaf ▸

Your Trustees (members of your board) have a remit to act in the best interests of your organisation and its beneficiaries. The final decision on any major change to your work rests with your Trustees. It is their role to see that the decision-making process covers all angles to make the most effective use of funds. Trustees must ensure their organisation acts legally and that professional advice is taken where relevant.

What does your governing document say about collaborative working or merger?

- Does your governing document include a power allowing you to establish and support, co-operate with, join or amalgamate with other voluntary organisations?

Charities without this power usually have an implied power to work collaboratively if it is in the best interests of the organisation and its beneficiaries. Implied powers do not allow for merger. If Trustees are unsure, they should seek advice from the Charity Commission or a solicitor. The Commission encourages organisations to seek advice early, particularly regarding legal and regulatory issues.

Will collaboration add value?

- Will there be measurable benefits to service users and beneficiaries?
- Will there be cost savings for your organisation?
- Will collaboration affect your potential income?
- Will collaborative working 'add value' to your organisation's work which justifies the time, effort and money invested in the collaboration?
- What will you lose by working on your collaborative project?
- Do you risk 'mission drift' because collaborating would mean moving away from your organisation's main aims?
- Will the structure of your organisation be affected by the change and, if so, how will you deal with the long-term implications?
- Will collaboration change your organisation's other existing relationships?

"We drew up a 'would- like-to-meet' wish list

for our ideal partners and then set out to find organisations that met most of our criteria."

– Stuart Rigg, Advance Chief Executive, on how Advance identified Second Step, MIND in Birmingham and Sussex Oakleaf as strategic partners

*"**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, Crisis Chief Executive, on communications around merger discussions held between
Crisis and Shelter. It was decided that the merger should not go ahead.

Who to involve

The people who lead the implementation of a new project or merger vary with the type of collaboration and may be Trustees, Chief Executives or project managers.

- What are the skills and qualities needed for this role?

If you decide to go ahead, you will need to plan who to involve when and whether to sound out representatives of your beneficiaries. If you are merging, you may have an obligation to consult your members. Set a timescale for your consultation process and plan how you will keep different groups informed of significant decisions.

- Who needs to be involved in each stage of decision-making?
- Who can be left until plans have developed further?
- Who needs to feel they own the new venture?
- How will you manage this process?
- Will you use a consultant or facilitator?

Potential partners

You may have in mind a potential partner that you already know and trust. It is still worth asking key questions to ensure that your assumptions about the organisation are correct. The same criteria for assessing a potential partner apply however compatible you think they are. Comparing organisational culture and working practice is as important as structure or management.

Working relationship

- How might formal collaboration change an existing relationship with your partner?
- Do you have clear shared aims for the collaboration?
- Do you and your partner see your respective inputs and outputs as fair?
- Do other organisations have experience of working with them?

Is your organisation compatible with your potential partner?

- Think about the other organisation's charitable objects, philosophy, culture, governance, organisational structure, decision-making processes, policies, financial resources, assets and funding base
- Can any areas of incompatibility be overcome?
- What are the organisational strengths and weaknesses of each organisation?

"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

Cultural diversity

The philosophy and culture of an organisation are complex areas which are difficult to quantify and therefore risk being ignored as you compare your organisation to your potential partner.

- Have you considered the impact of working collaboratively on your organisational culture?
- How would you manage a partnership which includes the different working styles of diverse groups?
- How will you accommodate the needs of different stakeholders and of partner organisations of varied cultures, sizes, ages or management styles?

Risk assessment & due diligence

Risk can be managed in a range of ways:

- By insurance
- By discovering and removing risk by investigation (due diligence)
- By making financial provision
- By the legal obligations created through contractual or partnership agreements
- By the legal structure used

Trustees are not discharging their duty of care if they do not seek to uncover the liabilities of a potential merge partner so risk assessment is advisable.

Risk assessments should also be carried out for collaborative working. Due diligence (sometimes called 'full disclosure') is an exercise which unearths the information that organisations need to be able to judge whether they should go ahead. Due diligence tailored to the voluntary sector should uncover potential legal, financial and operational liabilities.

- What level of investigation is appropriate to the size and nature of your collaboration?
- What skills or professional advice will be needed?

Lower levels of investigation can be undertaken where risks will be 'quarantined'. This may be done in a range of ways including:

- Using a separate limited liability company to protect your organisation
- Through contractual provisions such as limiting liability by laying out each organisation's responsibilities
- By obtaining indemnities from a third party which act as guarantees against risk
- By settlements with possible claimants such as staff

You will also need to consider how to manage areas including:

- intellectual property rights and copyright
- compliance with data protection law
- possible re-location for any of your activities and the impact of this
- staff changes

'In order to properly exercise *their duty of care, trustees should… properly consider the possible risks involved in collaborative working.'*

– Charity Commission, 'Collaborative Working and Mergers' (RS4) 2003

Financing your collaboration

Planning and setting up a new initiative and managing change takes time.

- Can you get funding for a feasibility study or risk assessment?
- Can you afford to set aside funding to set up and run the collaboration?
- Are your funders aware that collaborative working may take time to show results? Are there any 'quick wins' that will reassure them?

Financial management

- If you are grant funded, is one organisation in the partnership going to be financially accountable to the funder? How will you decide which?
- How will you manage the receipt and allocation of funding?
- Who is liable for what if things go wrong?
- If your collaboration involves charging for any service, VAT implications must be understood

Organisational impact

Always bear in mind the impact of collaboration on the quality, efficiency and effectiveness of your organisation as a whole. A risk analysis for each area of activity will help you identify:

- Opportunity costs
- How you would manage the risks
- How you would maximise the opportunities collaboration provides

Regular reviews will ensure you keep the work on track.

- How will you evaluate the ongoing success of the collaboration?
- How will you know when you have achieved your aim?

Public Relations

Collaborating can have an effect on your public profile. You may lose control over your brand, perhaps putting your reputation in the firing line if things go wrong as a result of partners' actions.

- How will you manage the branding of joint work?
- Is there potential for positive publicity about the collaboration?

Staffing

Clarifying the roles and responsibilities of individuals will limit the likelihood of conflict.

- Do you envisage problems with staff and volunteers with allegiance to their particular organisation, rather than to the proposed collaborative working project?
- How will you deal with conflict?
- Can you afford the time and money necessary to train staff and volunteers in new working procedures and systems?

Questions for merger

Merger can be achieved in a range of different ways. Each method has differing legal, staff, risk management and 'political' or brand implications. Early discussion of the options is key.

- Are there any restrictions placed on your sources of income or permanent endowment which could cause problems when transferring assets?
- Legal structures need to allow for legacies made out to the original organisations.
- Do current or old grants include conditions that require repayment if your governing document changes?
- What is the nature of any property holdings?
- What are your interim arrangements for governance during the merger process?
- How are you going to merge the different Boards?

Staffing and merger

TUPE is a law which protects employees' terms and conditions of employment when organisations merge. It restricts the circumstances when dismissal is fair and requires consultation. It is likely to result in a merged organisation employing people on varying terms and conditions. **The costs of not fully complying with TUPE can be great so legal advice is important.**

Formalising your partnership

Written agreements in formal partnerships aid clarity and help to manage conflict. It is important to set out exactly what will happen if the collaboration ends. In all but the simplest cases, a properly drafted legal agreement is recommended.

If you decide it's not for you

Collaborative working may not be right for you right now, but organisations should regularly review how collaborative working might help them. Each opportunity should be considered on its own merits.

Disclaimer

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

Further advice and support

NCVO's HelpDesk

telephone: 0800 2 798 798
textphone: 0800 01 88 111
email: helpdesk@askncvo.org.uk
www.ncvo-vol.org.uk/collaborate
www.askNCVO.org.uk

Charity Commission contact centre

telephone: 0870 333 0123
email: enquiries@charitycommission.gsi.gov.uk
www.charitycommission.gov.uk

SUPPORT FROM NCVO

The Collaborative Working Team offers information and advice to help voluntary and community organisations make decisions about whether and how to work collaboratively.

The Team serves the managers and trustees of voluntary organisations and infrastructure bodies as well as engaging with funders and policy makers.

This guidance was written with support from the Baring Foundation, the Bridge House Trust and the LloydsTSB Foundation.

The Baring Foundation

Collaborative Working Team
email: collaborate@ncvo-vol.org.uk
telephone: 020 7520 2440
NCVO, Regent's Wharf
8 All Saints Street
London N1 9RL