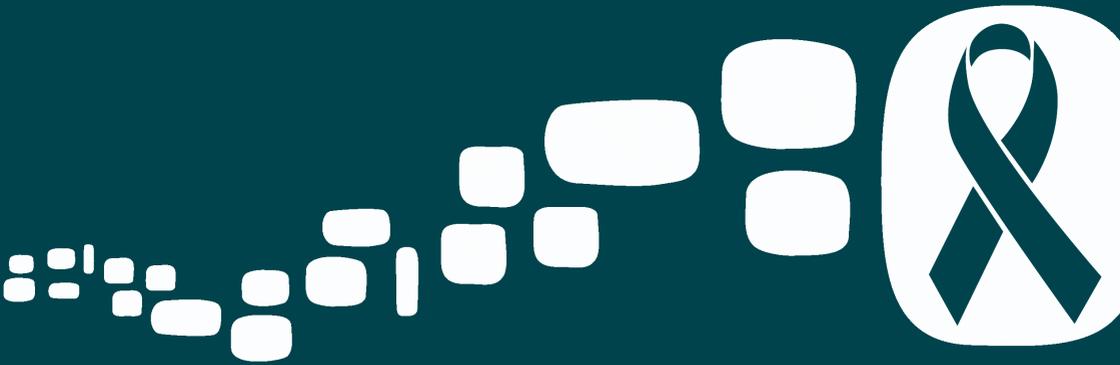




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Step change

Tools for success:
doing the right things and doing them right



Intellectual leadership: developing talent, enhancing performance

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About this guide

The purpose of this guide is to enable you to explore the possibilities of making a step change in the development of your organisation through the delivery of public sector contracts. The guide is part of a series which is produced to complement ‘Tools for Success – doing the right things and doing them right’.

This guide has been written to complement the third edition of ‘Tools for Success – doing the right things and doing them right’ and, where appropriate, refers to other guides in the toolkit. It aims to help you to maximise your opportunities to work with others, including taking the opportunity to add value for beneficiaries through delivering public service contracts.

The guide covers two key areas that hold the potential to help your organisation make this step change and set it on a secure footing:

1. Innovating to respond well to the public service agenda
2. Formal collaboration to add value and reduce costs (see also guidance on formal and informal collaboration in the **Connect guide**).

Each area of this guide offers an overview of the important activities with tools and templates to help you through them. There are also signposts to websites and other sources of information, support and advice.

Authors

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Public service delivery

Securing public service contracts

This section offers information and approaches about commissioning, its intention and a summary of a complex legislative framework.

Commissioning is the process by which government departments, local authorities and other public service agencies secure the services they need. This is usually done through a legal procurement process that requires potential service providers to submit a tender and as outlined below, is often a multi-stage process.

If you are interested in the delivery of public services (whether as a social enterprise, other social-purpose organisation or a charity) you will be considering the possibility of getting your services procured by the public sector. In doing so, you may find you need to deal with a local body like a local authority or a Primary Care Trust/GP Consortium or a national body like the Department of Work and Pensions.

Work required to submit a tender and the legal obligations of entering into a contract can often be challenging, but it can mean that you are able to do more work that you want to do, at an agreed price and for a set period of time.

You will need to weigh these advantages against the limitations, which may include a demanding procurement process, an impact on your independence of action and the need to develop new monitoring and performance reporting.

Understanding the commissioning environment

The planning framework behind public service delivery

Commissioning processes are in operation within both EU and Government policy and legislation. These frameworks influence the local strategy documents and planning processes, for example as carried out by the Primary Care Trust/GP Consortium or the Local Authority. However, commissioners have some flexibility in choosing how they want to deliver services and in some cases also the length of contract, as long as they deliver certain outputs and outcomes.

Government has stated that it wishes to improve nonprofit sector access to procurement opportunities. If you are working at a local level, you can access networking bodies like the local strategic or enterprise partnerships, so that you can keep track of the commissioning issues in your local area.

Commissioning and procurement

This is the process by which commissioning bodies like local authorities take national and local requirements for specific services and enter into contracts with third parties to deliver them.

EU regulations lay down four different types of procedure which public service agencies can use in order to choose between in tendering contracts:

1. **Open:** to all those interested who respond to the advertisement
2. **Restricted:** to a selection of those who respond to the advertisement
3. **Competitive dialogue:** following the advertisement, a first selection of bidders is made to develop solutions to the public service agency’s requirements; all the selected bidders then tender for these solutions
4. **Negotiated:** public service agencies choose with whom they wish to contract.

Public service agencies frequently choose open competition procedure, but they are not obliged to, although there is a view that many commissions would benefit from a more selective process with dialogue.

You may find it useful to be aware that many services of interest to us in the nonprofit sector, such as health, education and recreation come outside the scope of the full law on commissioning (are classified ‘Part B’ services which also gives the commissioner more flexibility in commissioning services).



You can find out more about EU and UK procurement regulations on the Outlaw website: www.out-law.com. See also Barnard H (2009), *Really Intelligent Commissioning: a thinkpiece* (London: acevo) www.acevo.org.uk, and NAVCA/NCVO (2010) *Pathways through the maze: a guide to procurement law* (London: NCVO) (www.ncvo-vol.org.uk).

Obtaining economic, social and environmental value

Check the criteria used in your area for selecting contractors for public services; price is an increasingly important factor in determining the award of contracts.

At the same time, there is pressure to ensure that public service contracts include provisions relating to social outcomes and social clauses and local authorities should therefore be to giving greater consideration to economic, social and environmental wellbeing when commissioning services.

Commissioners can choose to include additional ‘community benefit’ in criteria for contracts. These ‘social clauses’ specify that the service commissioned is to be carried out in a way which benefits the local area, or that prime contractors must work with specific nonprofit sector sub-contractors or evaluate in accordance with MEAT (Most Economically Advantageous Tender).

Lobbying, advocacy and relationship development

Securing a tender may be part of a process in establishing a long-term relationship with commissioners in your area. Mutual trust takes time to

build. If your organisation has no track record with the commissioner, plan a strategy for building your contacts with the commissioning agency and the commissioner as long as possible before the tender is issued.

In approaching your commissioner, you are seeking a ‘win-win’ position. Win-win is not just delivering what the commissioner wants but also influencing the commissioner to understand your organisation’s objectives and insights, as well as accepting the evidence of effectiveness gained from your organisation’s experience of working with beneficiaries.

Be clear and bear in mind what the commissioner is seeking to achieve and aim to communicate your successes in relation to that. Try also to position your work and contribution in relation to the national and local debate (regarding the shape and future of service delivery). Starting points may include checking that your bid resonates with the local authority strategy or planning papers; being seen to react to changes in national policy direction, or offering to help the local authority respond to emerging issues or opportunities. Make sure you have done your environmental scanning and have identified the priorities for your income priorities (see the **Direction guide**).

Personalisation and individual budgets

In health and social care, changes in national policy will give service users increasing control of their own care budgets. The full implications of personalisation and individual budgets are still emerging. It may mean more spot purchasing and less longer term contracts. The procurement framework for these services will definitely be transformed in the longer term. If you want to deliver these publicly funded services, think strategically and establish what your costs will be in this new way of working.

Cost and impact

Make a realistic assessment of the cost of your service and the price that you can charge; clearly you will need to balance being competitive with

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ensuring you can cover your management costs. However if you decide to tender to run a service, you will have to tailor the ambition to deliver a top quality service with a commissioner's tight budget. Before you decide where to pitch your tender price, make sure you develop a viable business plan and budget and ensure that all costs and risks are considered.

Full cost recovery

It is not the role of nonprofit sector organisations to subsidise from their own charitable sources public service provision that they are contracted to provide. However, historically many contracts (and grant agreements) have not allowed nonprofit sector organisations to re-coup management costs and their reserves, unrestricted funds and/or the quality of the work may have suffered as a result.

The Full Cost Recovery toolkit developed by ACEVO will help you consider and budget for your overheads as a basis for charging for a specific service. You will still have to decide whether your overheads are too expensive for the tender.



The acevo Full Cost Recovery Toolkit can be accessed through the FCR website: www.fullcostrecovery.org.uk

Legislative compliance

In order to make it through the screening process for tenders, you will have to demonstrate that you can meet the requirements of the legislation for the delivery of your type of service, as well as demonstrating compliance with UK legislation and practice e.g. equal opportunities, health and safety laws, credit worthiness. Make sure you know what these requirements are, as it is easy to be rejected at the screening stage on this kind of technicality.

Measurement and evidence

Draw the interest and attention of prospective commissioners by painting a clear picture of what you can do, and providing evidence about the effectiveness of your work. As part of any tender for work, you will be required to set targets and to deliver the work in accordance with them. Establish what you can deliver within your price, given your direction and your key beneficiary groups. Make sure you know what your commissioner wants (see information on environmental scanning in the **Direction guide**). It will add to your chances and help you to set up effective and cost-effective monitoring systems.



See the NCVO *Tools for Tomorrow* toolkit:

www.dsc.org.uk/Publications/Managementandgovernance.

The Charities Evaluation Service has a very useful website with a range of resources on monitoring and evaluation: www.ces-vol.org.uk

New Philanthropy Capital (NPC) offer advice based on in-depth research of social issues and tried and tested methods of analysing social impact:

<http://www.philanthropycapital.org/default.aspx>

Quality assurance

There are a wide range of quality assurance schemes. If you want to understand the capacity of your organisation for sustainability then start with the Tools for Success **Self-assessment guide**.



See Cass Centre for Charity Effectiveness Tools for Success self-assessment, online diagnostic tool: www.knowhownonprofit.org/tools-for-success/self-assessment

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For most small groups PQASSO is a helpful scheme, especially if you have relatively little experience of monitoring systems. However, as you grow you should consider becoming compliant with one of the bigger, more demanding schemes. These latter include for example the Investors in People, The Excellence Model of the European Foundation for Quality Management and ISO and the European ISO standards.

You will be well advised to opt for one of these if you want to succeed in the tendering process, since commissioners regard these as an additional reassurance that they are buying competent and professional service delivery. Procurement documents often mention ISO but alternatives are usually accepted.



For example quality assurance schemes and models see:

- PQASSO: www.ces.vol.org.uk
- Investors in People: www.investorsinpeople.co.uk
- European Foundation For Quality Management Excellence Model: www.efqm.org/en
- ISO (The International Organization for Standardization) Schemes: www.iso.org

Stages in tendering for contracts

1. Tender advertisements

Sometimes in order to respond to an advert you will first have to submit a very simple 'Expression of Interest'.



You can access tenders at www.publictenders.net

2. Pre-Qualification Questionnaire

Processes often start with the Pre-Qualification Questionnaire (Pre-Qual or PQQ). The purpose of the Pre-Qual is to set out the information by which the commissioner might assess the suitability of different suppliers to deliver the service. There is no standard format for this although a lot of the information required is similar.

3. Invitation to tender

While the Pre-Qual will be more about your suitability as a provider, the (much longer) Invitation to Tender or ITT will focus on the specific proposal, including a detailed submission on how you plan to deliver the service, how much it will cost, and why you are best placed to deliver the service.

4. Interview and presentation

You may be asked to present your proposal to the commissioning body. Present your proposal succinctly and be prepared to answer a range of questions (practice with colleagues if you can).

5. Negotiation

There are a number of points in the process at which negotiation might be permitted once you have been short listed and once you have won the contract. It may also be possible once you have commenced service delivery.

To negotiate well, thoroughly research and understand what the other person wants and be clear of your own position, and the best alternatives to no agreement. Aim to understand the commissioner's needs by meeting, and planning questions that will help you achieve this insight.



NCVO's Public Service Delivery Network offers a wide range of resources for VCOs engaged in or considering service delivery under contract and for commissioners working with the nonprofit sector (www.ncvo-vol.org.uk).

Also see acevo (2007) *Negotiation strategy and tactics for third sector leaders* (www.acevo.org.uk)

An alternative to bidding for public service contracts

Service level agreements

The service level agreement (SLA) is a negotiated agreement between the service provider and the commissioner. It lays out the terms of the service and includes performance requirements.

There may be circumstances in which you do not want to tender, but want instead to be funded to trial a particular service. One way to do this is to develop an SLA.

This kind of agreement is particularly relevant if the type of service you are proposing is a new one for your area. A service level agreement will enable you to see how it works in your specific area – sometimes referred to as 'Action Research', since you are researching the need and the form of delivery by running the service, whilst tracking its progress and outcomes.

The Compact

The Compact is a negotiated agreement (without statutory force) between the Government and the nonprofit sector to establish a mutually acceptable framework for their work. It is governed by five codes of good practice:

1. Funding and Procurement
2. Consultation and Policy Appraisal
3. Black and Minority Ethnic Groups
4. Volunteering

5. Community Groups.

The NCVO website (www.ncvo-vol.org.uk/compactadvocacy) gives access to a summary of Compact code undertakings by Government and a summary of Compact undertakings by the nonprofit sector. NCVO has a Compact Advocacy Programme with case study resources which may be helpful. Local and regional Compacts have been developed to support partnership working locally between the sectors. Many local authorities now have a local Compact agreement you can access.

More information on developing ways of working together, including for in bidding for public service contracts, is given in the Collaboration section below.

Formal collaboration

Step change usually involves formal collaboration with other nonprofit sector organisations and sometimes with public services agencies and private and corporate bodies. Working collaboratively, rather than in isolation or competition, can mean – although it does not always and automatically follow – more holistic, effective, economic and informed services for beneficiaries. This section focuses on the most common forms of formal collaboration, all bringing their own costs, risks and benefits.

Formal collaboration is particularly important in the nonprofit sector as part of a strategy for winning public service contracts. It can also be used to achieve other funding, buying-power or investment. It can provide greater discounts or access to opportunities otherwise unavailable to a smaller single entity/organisation.

If you want a formal collaboration, focus at an early stage on how you plan to manage the relationship. This is crucial, since it ensures that there is sufficient common ground and understanding about purpose and processes. So define the accountabilities and responsibilities clearly at

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the outset. It will also pay to ensure reliable documentation processes, stakeholder management and financial monitoring.

Before making a decision to collaborate, invest time in researching the best opportunities for partnership working. These actions will yield returns, for example in cost savings, additional income, greater weight in influencing public policy, and an earlier understanding of the step changes needed in your organisation's capacity and capabilities.

Collaboration to secure public service contracts

For most small nonprofit sector organisations winning a contract will seem like a big jump. The options below offer some alternative ways of collaborating in bidding for and delivering public service contracts.

1. Consortia development in public service delivery

If you are too small, partnership working achieved through being part of a consortium with other experienced nonprofit sector organisations (and/or private sector companies) might allow you to get a foothold in procurement. Consortia enable different sizes and types of nonprofit sector organisations to play a part in delivery and some commissioners actively encourage the development of consortia to deliver contracts.

The seven-stage process shown here is a guide not a prescription. Creating a consortium takes members' time, and requires some financial outlay. Consortium members need to understand how they fit together and their respective roles in delivery. The process of establishing a consortium benefits from:

- An organisation that takes the lead role, holds an overview of the process, engages potential members and interested parties (e.g. commissioners, beneficiaries), and acts as a broker
- External advice, including around documentation and legal issues.



Developing a consortium: Voluntary Action Sheffield's seven-stage process

Thinking about forming a consortium

- Stage 1: Identify interested organisations, clarify areas of service delivery, establish will/need
- Stage 2: Identify issues of concern, potential possibilities and introducing development models

Concentrating on the development of the consortium

- Stage 3: Developing a business strategy for the consortium, enabling decisions to be made about the future direction of the consortium and forming a Working Group to oversee the next 3 stages

Working towards the formation and launch of the consortium

- Stage 4: Producing the documentation – business plan, membership prospectus, memorandum of understanding – to underpin the consortium based on materials and decisions generated by the first three stages
- Stage 5: Incorporation of the consortium

Membership action

- Stage 6: Raising finance for the development stage of the consortium
- Stage 7: Launch of the Consortium and Membership Prospectus

Source: Voluntary Action Sheffield (2008) Consortium Toolkit

2. Subcontracting

If an organisation that is bidding for a contract has a gap in the range of services it can offer to meet a particular specification, it may choose to subcontract part of the service to a specialist organisation as a way of addressing this gap. You might find opportunities to take a small subcontract from the winner of the tender (generally referred to in commissioning processes as a 'prime contractor' or 'lead provider' i.e. the organisation that has won the entire contract).



Practical issues for potential sub contractors

- Does your service compete or complement what the lead provider offers?
- Do you offer a specialist service in specific communities or to specific beneficiary groups?
- Can you be sufficiently flexible to meet the lead provider's service requirements?
- For what length of time is the contract offered by the lead provider?
- Is the lead provider offering any additional services?
- What percentage of the funding is the lead provider taking as a management fee?
- What is the reputation of the lead provider (finance, quality)?
- How well has the lead provider worked with sub contractors before?
- Are there further opportunities to work with the lead provider?
- Are there partnership opportunities to work with other sub contractors?
- Will the management style and practice of the lead provider be helpful and supportive?

Subcontracting can provide an opportunity for smaller organisations to become involved in a contract. They can provide access to particular communities or to people in a particular client group or they can offer particular skills e.g. counselling, brokerage or training. They, in turn, can also benefit from the experience of the larger/national organisation in tendering and in managing contracts.

Some organisations are wary of this approach, because of the danger that the main contractor will 'cream off' most of the money in the form of a management charge. However, subcontractors are often in a potentially strong negotiating position to combat this, because their involvement could be the deciding factor in determining whether the contract is won or lost.



Example of standards in subcontracting practice

The Department for Work and Pensions (DWP) has developed the Merlin Standard (www.merlinstandard.co.uk) to support smaller, specialist and nonprofit sector providers to work as subcontractors in delivering welfare to work services. The Standard has four principles – supply chain design, commitment, conduct and review. Prime contractors must conform to a Code of Conduct governing their commissioning activity.

3. Vertical integration

This is where a smaller and often more locally based organisation seeks to work with a large usually national organisation (or vice versa). It is a type of subcontracting. There are some examples of this working in the nonprofit sector, and also in healthcare and the NHS. It has distinct pros and cons (see table on p.18).

Vertical integration is not a quick fix. It can take time to broker the right deal. It may not suit the very smallest organisation. A high degree of trust is needed to make it work. There needs to be shared confidence in the quality and value for money of the partners' services. Vertical integration needs to be considered alongside more horizontal collaboration (e.g. consortia).



See Barnard, H (2007) *Vertical integration: A version of voluntary and community sector collaboration* (London: VCS-Engage) www.ncb.org.uk/media/46917/vcs_vertical_integration.pdf

Vehicles for collaboration beyond public service contracting

1. Outsourcing

Both smaller and larger nonprofit sector organisations are increasingly looking to use outsourcing as a way to optimise internal capacity, with back

Pros and cons of vertical integration

Feature	Pros	Cons
Delivery to people and communities	Can retain a local dimension combined with greater capacities and economies of scale	Involves a large lead partner often without local roots
Voice of beneficiaries	Can motivate best practice by partners to hear the voices of beneficiaries	Can make for complex and unwieldy relationships in ensuring the voices of beneficiaries are heard
Sustainability of small nonprofit organisations	May offer greater flexibility and resource in managing change	Not a universal solution for small nonprofit sector organisations
Independence/dependence of smaller nonprofit sector organisations	Leaves smaller organisations with their identity, brand, governance and independence	Unequal power relationship with larger partner
Fit with culture and values	Builds on existing collaboration between larger and smaller nonprofit sector organisations	Perception that the values of larger and smaller nonprofit sector organisations differ and may be in conflict
Transfer of skills and knowledge	Mechanism to transfer expertise and facilitate training	Worry that larger organisations will 'asset strip' smaller organisations
Mutual interest/ organisational interest	Complementary expertise and skills in delivering services	May bring added risks to be managed e.g. conflicts of interest in whose expertise and resources are used.
Tenders and contract management	Play to respective strengths in smaller organisations (e.g. creative process) and larger organisations (e.g. better equipped to bid for and manage contracts)	Larger organisations may carry greater overheads. Pressures on costs may be felt first by smaller organisation

office functions (human resources, IT, training, accounts and payroll) being externally sourced. Make sure that someone in your organisation does a cost and benefit analysis for quality, value for money and the impact on beneficiaries. Take into account the impact on your staff, as outsourcing may result in some roles changing or disappearing. If you are thinking about outsourcing, consider also longer term needs, including retraining or recruitment of your staff. Consider whether back office functions could be shared with another third sector organisation instead of outsourced.

It is worth exploring gaps in your organisation which might be filled by outsourcing. However, outsourcing will not succeed unless to begin with you ensure:

- Clarity about objectives
- Basic routines and ways of working are in good shape.



If you decide to outsource some work, allocate a member of your staff to manage the outsourcing partner relationship and recognise that this will call on their time. It will increase the likelihood of success.

2. Joint venture

A joint venture (or joint undertaking) is a form of partnership or business agreement in which the partners agree to develop, over a set period of time, a new entity and new assets through joint investment. They share in control over the joint venture and consequently share revenues, expenses and assets. They are generally more substantial initiatives that take place over a longer period. Some of the larger initiatives can involve overseas partners.

Joint ventures typically aim to extend the scope of beneficiary fundraising, develop service delivery or new campaign initiatives. They are likely to be project or programme specific and require formal planning, marketing and delivery. If you decide to undertake a joint venture, make sure that you have the people and skills capacity – particularly project and financial

management; such projects can only succeed if they have committed ‘sponsorship’ at an appropriate level in the organisations involved. Be clear about the interests of all the parties for being involved in the joint venture.

You need to be clear whether the joint venture represents a primary purpose activity and is therefore exempt from tax (for charities) or whether it is non-charitable and therefore liable to tax. If you are considering a commercial joint venture, take care that you consider the impact it may have on the charity’s image or brand. You will need to ensure that you have the right vehicle, good governance arrangements and a clear idea of the tax implications.



See CFDG (2010) *The tax implications of charity trading* (London: CFDG) www.cfdg.org.uk/.

Case study:

Bankers Benevolent Fund (BBF) and National Autistic Society (NAS)

In 2006 BBF refocused part of their grant giving through a partnership with NAS. They identified autism as an issue that affects a large number of individuals in the banking community and formed a partnership with NAS to raise awareness amongst people in the banking community, and to help families who are affected by autism. It involved tailored support based on individual needs including courses, helplines and practical guides.

Beneficiaries received help that without the partnership, BBF (www.bbfund.org.uk) would not have been able to provide.

3. Merger

A merger is a coming together into one organisation of two or more organisations which have complementary characteristics/services. The Charities Act 2006 removed a number of legal obstacles to charities merging. Considerations in this section apply to group structures.

Mergers should be considered and do take place when things are going well in an organisation, as much as when they are in crisis. Merger may be the option which produces the best outcome to beneficiaries and users, but is usually the most complex. Mergers could pioneer new ways of working, but equally, you should be prepared to withdraw from merger discussions if unforeseen problems change the balance of benefit and disadvantages of the potential merger.

If you do consider a merger, it is essential that you have a very thorough ‘due diligence’ process; you will almost certainly need the help of professional experts. Due diligence describes the investigative steps, particularly financial, legal and contractual, that organisations take to assure themselves that a merger is in the best interests of their organisations and beneficiaries. The results should give you good knowledge of the organisation with which you want to merge.

In planning a merger the areas which you must be sure to cover are:

1. A detailed review of the governing documents of the organisation and any dissolution clause. The Charity Commission can offer specialist advice
2. Establishing sound project management of the merger process. This will help you to have a clear assessment of the costs involved
3. Reputation and track record of the organisation in delivering quality services, working with partners and external accreditation
4. A good, consistent way of communicating with staff, volunteers, beneficiaries and users, funders and other stakeholders
5. An awareness of the needs of the people you work for and with – you cannot assume cultural integration between two organisations will ‘just happen’; it may be complex and you need to plan to achieve it
6. TUPE and pension issues; these may need specialist HR expertise
7. Understanding contractual obligations of the organisation to deliver services, for outsourcing core functions, for any joint venture, and relationships with suppliers.



Mergers: practical issues and potential deal-breakers

- What are the vision, objectives and values for the merged organisation?
- What are the proposed governance arrangements for the merged organisation?
- Who will lead the merged organisation?
- What do the funders/commissioners think of the merger proposal?
- What will the merged organisation be called?
- How will the organisation deliver its services, e.g. staff, volunteers, policies, systems, offices?
- How will 'business as usual' and 'creating the new' be managed without losing momentum and quality?
- What cost savings or improvements in quality will result?
- What are the cultural differences which may need to be overcome and how will this be done?
- How will the voice of beneficiaries be heard in the merger?
- How will members, supporters, volunteers and staff 'own' the merged organisation?
- What are the liabilities and assets, current and contingent?

Finally, take a lead in ensuring that the best interests of future generations of users and beneficiaries remains paramount, whilst bearing in mind that it can take many years to fully realise the benefits of a merger. A long fruition is not a reason for rejecting the idea of merger, but the benefits need to be clear to all concerned and should inform the final decision.

Signposts

Publications

Institute for Voluntary Action Research (IVAR) (2011) *Thinking about... mergers* www.ivar.org.uk

Charity Commission: guidance note CC34 'Collaborative working and mergers' provides further information: www.charitycommission.gov.uk/publications/cc34.aspx

Cass CCE has a number of helpful publications including a thought piece 'On the merger bus': www.cass.city.ac.uk/_data/assets/pdf_file/0007/121984/Onboardthemergerbus.pdf

Websites

KnowHow NonProfit www.knowhownonprofit.org

NCVO www.ncvo-vol.org.uk

Where to go for advice

Cass Centre for Charity Effectiveness also offers training and support in many aspects of organisational development. For more information about our short courses, Master Classes and other events, and our MSc and post-graduate Diploma programmes, see www.cass.city.ac.uk/cce/

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Cass Business School

In 2002, City University's Business School was renamed Sir John Cass Business School following a generous donation towards the development of its new building in Bunhill Row. The School's name is usually abbreviated to Cass Business School.

Sir John Cass's Foundation

Sir John Cass's Foundation has supported education in London since the 18th century and takes its name from its founder, Sir John Cass, who established a school in Aldgate in 1710. Born in the City of London in 1661, Sir John served as an MP for the City and was knighted in 1713.

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