

Merger

**a brief guide to the literature for
voluntary and community sector organisations**

by

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tackling homelessness together

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The London Housing Foundation

navigation guide to mergers

Introduction

Mergers are certainly in the air. No longer the preserve of the private sector, they have become a standard consideration within the voluntary and community sector (VCS) as organisations develop or expand or contract. To some organisations they represent a positive move towards a stronger future, combining resources within a natural operational fit. For others, mergers are more threatening and represent a challenge to identity, flexibility and autonomy. They take many different forms and happen in response to a diverse range of triggers and drivers, some from within an organisation and some through external forces.

Merger is not the solution in all cases: indeed there are concerns that agencies may be under pressure to move towards merger before other organisational or collaborative options have been fully explored. The London Housing Foundation have become aware that there is a gap in information to VCS trustees and Chief Executives thinking about mergers or wanting to know more about them. The Foundation commissioned Alan Cripps, of Neadon Consulting, to carry out a literature review of available relevant material. His work forms the basis of the following pages. It is not an exhaustive account but aims to cover the key texts in a way that signposts VCS agencies and those in the homelessness sector in particular, to those resources likely to be most helpful at different stages of the merge process.

There is no single guide that covers all the stages and elements of merger and that could be simply recommended as the 'standard' text. The report is therefore structured in two sections: the first provides a more detailed exploration of key publications and a brief overview of useful but less relevant pieces; the second uses the key elements of the merge process and signposts to the combination of reports most likely to provide a complete range of advice and information. The appendices contain an extended bibliography of available sources, including links or contact details.

A word on information sources

The literature review was compiled from a total of 60 publications (see Appendix 1). These include readily available examples of advice and guidance from institutions and research units within the VCS, articles from academic journals, trade/business journals and publications that are out of print. Only those that are relevant and accessible are explained in depth.

There has been a great deal written about private sector mergers but literature based on VCS examples, experiences and environments is considerably thinner on the ground. The extent to which corporate sector experiences can be used to inform VCS mergers is debateable: as several publications point out, there are a number of substantial differences and while there are many valuable lessons which can be drawn from one sector for the benefit of the other, there is no automatic read-across, and a process of translation would be needed to avoid misleading conclusions being drawn. In general, therefore, corporate sector information is not included. However, a number of the publications make references to articles and books dealing with corporate sector mergers and, where this is the case, these sources have also been included at Appendix 1.

NOTE: This guide is provided as a PDF with links to the materials it refers to. Please note that links may load web pages or PDFs and you will need an up to date version of Adobe Acrobat or other PDF reader on your computer. If you have any technical problems using the web site or this PDF, please contact the foundation's web site manager [Jo Johnson](#).

Section one – the publications

This section provides an overview of the main available texts that are relevant to the VCS and gives a synopsis of some of the most useful.

From the top down

Aside from the obvious internal drivers towards considering mergers that stem – broadly – from sustainability and/or operational coherence and which are discussed in more detail later, there is growing encouragement at the shaping level of the VCS (i.e. from Government, funders and regulators) for organisations to consider mergers as part of the move towards [‘a modern legal and regulatory framework’](#).

In September 2002, the Cabinet Office Strategy Unit (SU) produced a consultative report [Private Action, Public Benefit](#) (PDF) which aimed to ‘modernise the law and enable a wide range of organisations to be more effective and innovative’. The report recommended that the Charity Commission should provide specific advice to facilitate mergers (possibly through a dedicated unit) and produce regulatory guidelines to help charities identify and assess any risks and liabilities (a due diligence exercise) when considering potential mergers. The SU report also recommended that a package of legal measures should be introduced which could facilitate mergers and, more generally, enhance the administrative running of a charity.

Following the consultation and the government’s White Paper response [‘Charities and Not-For-Profits: A Modern Legal Framework’](#) a draft Charities Bill was drawn up in May 2004 with several implications around mergers, including:

- Making it easier to transfer property to a merged charity – future legacies and gifts will transfer automatically, providing the merger is registered with the Charity Commission, and trustees can transfer property by making a declaration, without the need for any further document of transfer;
- Simplifying the rules allowing small charities to merge and to modify their objects and making these powers available to more charities by raising the upper income limit;
- Relaxing the conditions for changing a charity’s purposes;
- Giving all unincorporated charities a power to alter their constitutions and making it easier for charitable companies to amend their Memorandum and Articles.

The [Charities Act](#) received Royal Assent on 8 November 2006 and its provisions will begin to come into force in early 2007. The Cabinet Office’s [Office of the Third Sector](#), set up in May 2006, is working with the

[Charity Commission](#) on informing the VCS of the implications of the Act, including producing a 'plain English' version in early 2007.

Other recommendations from the 'Private Action, Public Benefit' report were taken forward without legislation and these form an important part of the existing framework from the Charity Commission. In 2004 it published a policy statement outlining how it would take the work forward: [Policy Statement on Mergers, Collaborative Working and Due Diligence](#).

The Commission published guidance in June 2006, [Collaborative Working and Mergers: An Introduction \(CC34\)](#) building on its 2003 regulatory report [RS4 - Collaborative Working and Mergers](#) . The reports outline their regulatory stance and principles. The latter publication does not have the clarity of CC34 (which is described in more detail below) and suffers from trying to fulfil a dual purpose: a discussion of survey results, and guidance on the merger process. There are some useful nuggets to be found, but a lot of extraneous material to wade through before finding it. It would not be required reading, but might provide a useful touchstone for reflection for people who have already covered the bases and are immersed in the process.

CC34 – Collaborative Working And Mergers: An Introduction (56 page A3 booklet)

Synopsis

The booklet's aim is to highlight some key issues, to provide guidance on the legal and good practice requirements, and give an indication of the Commission's attitude to the issues raised, and where its permission or help may be needed. It contains:-

- a useful section defining commonly-used technical terms
- a section on collaborative working
- a definition of merger, an explanation of the main forms which merger can take (two-way dissolution and creation of a new body; transfer of undertakings; and one charity becoming Trustee of another), and a brief explanation of dissolution clauses and the issue of compatibility of objects and structures
- a checklist of information to be gathered at the outset
- examples of powers to merge in governing documents, and the circumstances under which the Commission's consent may be needed
- an explanation of the issues raised by special trusts, restricted funds and permanent endowments
- the involvement of a charity's members in the decision-making process
- costs involved in merger processes (both those that can be anticipated and the hidden/unforeseen costs) and a good general description of some of the less quantifiable factors
- a list of other issues to be considered (e.g. confidentiality, TUPE, staffing issues, risk assessment, communication and stakeholders, culture) but no advice on how to handle them
- a useful skeleton some of the stages involved planning process
- a brief section on the role of the Chief Executive in the merger process
- an explanation of what due diligence is, what areas to cover, and options for carrying it out (do it yourself or pay someone)

Comments

This is not a comprehensive guide to mergers – it sticks to the areas in which the Commission has a regulatory interest; as an example, it mentions that culture is a factor to consider but says nothing more on the subject.

However within its chosen territory it is a clear and well-written guide and is a very useful introduction to the legal and regulatory requirements surrounding merger. It contains a number of case studies which help to illustrate some of the themes it covers.

Other technical guidance

As the Charity Commission publications suggest, there is a limited amount of precise legal stipulation and the Commission's role is in providing a broad framework that is relevant to all charities. From a non-regulatory perspective, there are two other publications which take a directly legal approach to mergers, both published by the Charity Law Unit at the University of Liverpool as part of a project on charity mergers: "[Mergers: A Legal Good Practice Guide](#)", and "[Legal Issues In Charity Mergers](#)".

The *Legal Good Practice Guide* distils the key learning points from the entire charity mergers project. It is short (19 pages), clear, and extremely useful within the territory it covers; it aims to provide a route map through the legal process of merger. Where it offers advice, it is sensible and pragmatic and it could be viewed as an essential general introduction when contemplating a merger.

Mergers: A Legal Good Practice Guide

Jean Warburton; University of Liverpool Charity Law Unit (19 page PDF download)

Synopsis

This guide was published in 2001 as part of a merger project which also produced its companion publication "*Legal Issues In Charity Mergers*". Its aim is to help charities which have decided that merger is best for them to anticipate and deal with the legal issues that can arise, and to offer a general route map and some practical advice. It is set out in a number of brief sections as follows:-

- **Thinking about merging:** whatever the driver for a proposed merger, Trustees need to consider carefully if merger is the best solution – alternative forms of joint working may be more appropriate.
- **First steps:** governing documents need to be checked to see if it contains powers to amalgamate and transfer property and, if there is a membership, what majority is required to approve transfer; where necessary, governing documents should be updated at an early stage. Checks should also be carried out to see that all contracts with staff are clear and in writing, that the charity has clear agreements for all properties it occupies, and that membership records are up to date.
- **Forms of merger:** the paper lists ten forms which merger can commonly take, and stresses that there is no "best" form – charities need to choose what will be most effective and appropriate for them. The paper sets out some of the considerations which might indicate a particular set of options, including the need to avoid an appearance of takeover, need to limit risk where a "rescue merger" is involved, the existence of a member base, wish to avoid liability on transfer of staff, the need to maintain a shell company to receive legacies or to maintain funding arrangements which cannot be transferred, and legal considerations arising out of the prospective partners' powers, objects, incorporated status etc.
- **The new charity:** Trustees need to ensure that the governing document of the new charity has wide enough objects and powers to ensure that all of the planned activities can be accommodated, and to think about the

way in which it is to be governed; factors to consider include size and skills mix, and whether interim arrangements might help to smooth the transition.

- **The process of merger:** this section covers the setting up of a joint merger group, appointment of a neutral facilitator, and the taking of professional advice. It suggests that initial legal advice should be sought early to enable a route map to be drawn up, potential problems highlighted, and a realistic assessment to be made of what the charities can do for themselves and where they might need further help, and that with care it is possible for one solicitor to advise both charities. It also advises informing the Charity Commission at an early stage.
- **Due diligence:** A two stage due diligence process is recommended: the first, at an early stage, to see that the merger is legally possible and to assess compatibility; the second, more detailed, to cover finance, employment, assets and governance. The actual carrying out of the work should also be divided into stages: taking professional advice on what needs to be found out and drawing up a checklist; trustees or employees trying to find out the relevant information; taking further professional advice on areas where problems have been revealed. There is an explanation of warranties and indemnities; the paper suggests that, while indemnities are not appropriate in a merger of charities, warranties may be a useful way of sharpening up the due diligence process.
- **Employees and volunteers:** There is an explanation of TUPE, the essentials of which are still relevant despite changes in the regulations in the five years since the report was written. The section briefly covers such issues as who is an employee, the need for details about every employee's contract and terms of employment, the need to take specialist advice if harmonising terms and conditions, and redundancies.
- **Assets:** The advice here is to start as early as possible to identify all the property owned or used which it is intended to transfer. It covers problems which can arise with the transfer of leases, and where a property is occupied without a clear written agreement, and the need to contact suppliers to check whether they are happy for agreements to be transferred to the merged charity. There is also a paragraph on permanent endowments
- **Funding:** This section covers: the need to ensure that funders are happy to transfer funding agreements; the need to properly identify different funds which the charity holds and to check which are restricted and which not; the issues which can arise with covenants; and the need to retain a shell charity if legacies are a possibility.

Comments

Clear, well-written and concise, this is an extremely useful guide to the key legal issues involved in merger which takes a balanced, sensible and practical approach to the advice it gives (e.g. the structuring of the process so as to make most the cost-effective use of professional advice, and the suggestion that with care one legal advisor can act for both parties). It is not a complete guide to merger – it does not cover the operational/managerial aspects – and its section on TUPE is now a little outdated (though still sound in its essentials). Nonetheless it would still form part of a list of essential reading for Trustees and Chief Execs contemplating merger, and its brevity and clarity maximise its usefulness.

[Legal Issues In Charity Mergers](#) is a report on the results of the research which formed the basis of the charity mergers project, and from which the *Good Practice Guide* was drawn; it is longer and more discursive – the *Good Practice Guide* is a better general introduction. The main findings of this report are distilled in the *Good Practice Guide*, and there is therefore no difference between the two in terms of the conclusions they draw. The value of *Legal Issues* is that it explores the way in which different charities and their advisors have approached the issues which crop up in merger, and to appreciate that there is no universal template for success – pragmatic judgements have to be made in the light of the particular circumstances. It is very useful background reading for those who have already set out on the journey and are engaged in trying to manage the process. It also contains some very clear explanations of legal terms such as assignment and novation, which are part of the lexicon of mergers.

Organisational and managerial literature

The majority of the most useful texts fall under the heading of organisational and managerial literature. Many also cover some of the legal areas covered in previous sections and attempt to provide a broad coverage of all aspects of the merge process. There are six titles explored in greater detail under this heading.

[Mergers: A Model of Collaborative Working](#) published by NCVO and drafted by James Sinclair Taylor, a leading charity lawyer. This is a whistle-stop tour of the issues involved in merger – both the legal aspects and operational/managerial issues. It makes a useful checklist of items to consider at the outset, and gives some helpful general guidance (the section on culture makes some particularly useful points which might help Trustees to avoid getting fazed by an issue that can seem very intangible). However, it does not cover any of the issues in great detail, and therefore needs to be read in conjunction with other sources of help. A useful part of a “starter kit”.

[“Key Findings on Voluntary Sector Mergers”](#) published by the Centre for Voluntary Action Research at Aston University. An excellent, concise and clearly-written summary of the key strategic and organisational issues which face charities considering merger. It is an essential part of the resource kit for any Trustee or senior manager trying to think through what these issues mean for their organisation. However, it does not set out to provide a route map through the organisational/managerial issues, and this is a gap that needs to be filled by another publication.

[“Due Diligence Demystified: What it is and how you manage it”](#) is written by Mike Caudrey and published by NCVO’s Collaborative Working Unit and is available in hard copy only. It is written for small to medium sized voluntary and community organisations and provides a thorough, practical and accessible navigation through the due diligence process which is designed to minimise external consultant costs by showing where work can be done as effectively in-house (and provides a useful template for commissioning external support). It covers when due diligence exercises should occur; how to reduce costs and where to apply for external funding; and, in the longest section of the guide, a table setting out each area of due diligence accompanied by practical advice on the documentation and information

required, tasks to be undertaken and key questions to answer. An essential component of a merger kit for those with little or no prior knowledge of due diligence.

[“Success Factors in Nonprofit Mergers: Lessons from HIV/AIDS Agencies in the UK”](#) also by CVAR. Contains a good literature review and a case study followed by some general conclusions. Produced as an academic paper so possibly less approachable than *Key Findings*, but still with a clear focus on drawing practical conclusions from research and as well-written. Focuses on the stages of merger which tend to be skimmed by other publications (implementation and post-merger integration). Good background reading for those already engaged in the merger process although it is not well signposted, and is easy to overlook.

[“Merging Interests”](#) by Bill Mather, published by the Baring Foundation. Sets out to be a comprehensive guide to the entire merger process, but has a number of significant gaps (such as due diligence, and the importance of vision and leadership). It contains some useful features – in particular, checklists.

“Managing Mergers – A Guide” published by ACEVO. Despite its title, this is not really a guide to managing the merger process, but consists of a literature review, five extensive merger case studies, a discussion and analysis of the case studies, and a brief review of the legal agenda for merger. It contains a number of useful insights which need to be factored in when thinking about merger.

“Mix, Match, Merge? Issues and Options for Charities Considering Mergers and other Partnerships” Out of print but published by, and still available from, CASS Business School. This comes as close to providing a comprehensive coverage of the key issues as anything currently in print. Clearly written and provides a useful synopsis of the research available at the time, much of which is still relevant. The checklists and appendices are useful, and the section on the significance of culture is the best in any of the available publications.

Merger: A Model Of Collaborative Working

James Sinclair-Taylor; NCVO Collaborative Working Unit (16 page hard copy or HTML on NCVO website)

Synopsis

This model was published in 2006. Its aim is to help Chief Executives, managers and Trustees who are looking at the possibility of merger by outlining how organisations handle the merger process and describing good practice in key areas. It is set out in a number of brief sections as follows:-

- **Mergers in the VCS:** provides a definition of merger (explaining that this can in some cases include takeovers), and a review of the common drivers for merger. Lists the common forms of merger (formation of a new entity, merger using one of the existing organisations’ structure, and group structures. Outlines the issues involved in the decision to merge, i.e.: who decides? (ultimately it must be the Trustees); can you

merge? (does your governing document include power to merge or a dissolution clause); should you merge? (will the merger enable both parties to achieve their objectives and will it be in the interests of their beneficiaries?); the need to identify potential deal breakers early in the process.

- **The merger process:** Identifies the importance of: leadership and a clear vision, establishing a steering group, agreeing timescale and budget, identifying the resources needed (staff time and input from external advisors/consultants), seeking advice from regulators. Contains a brief section on due diligence, which includes the need to identify future risks and the viability of the merged organisation, as well as assessing any current financial problems.
- **Staff and stakeholders:** When staff are told will depend on the culture and circumstances of the organisations involved, but once they are, keeping them informed and involved is an important way of minimising fall-out; time needs to be allowed for formal consultations where these are required. Recommends taking early legal advice on legal risks and obligations to staff, and identifying early which other stakeholders need to be consulted before a decision to merge is made.
- **Good practice:** Stresses the importance of
 - establishing clear roles and leadership and resolving the Chief Exec issue early, and considering interim governance arrangements and the composition of the merged Board
 - the need to consider brand and identity,
 - addressing the issue of culture; organisations facing a challenge of ostensibly incompatible cultures need to question whether this should be regarded as a reason for the merger not going ahead, or whether perhaps cultures need to change because they are causing the organisation to fail to meet its aims (incompatible culture can sometimes be used as a smokescreen to disguise other issues which need to be addressed); a brief checklist is provided of factors to consider when assessing culture
 - team working pre-merger; finding opportunities for staff and Trustees to work with their opposite numbers can help post-merger integration.
- **Post-merger:** recommends maintaining steering group to oversee the process of combining cultures and working practices, delivering the benefits that merger was intended to achieve, and dealing with legal and financial issues which have arisen out of the merger
- **Case studies:** there are a number of case studies throughout the leaflet which illustrate key points, some of which overlap with those in other publications.

Comment

This is a useful checklist of items to consider at the outset, and gives some helpful general guidance, but it does not cover any of the issues in great detail, and therefore needs to be read in conjunction with other sources of help.

Key Findings On Voluntary Sector Mergers

Ben Cairns, Margaret Harris and Romayne Hutchinson; Centre for Voluntary Action Research, University of Aston
(12 page PDF download)

Synopsis

This paper was published in 2003, based on CVAR's research, and its experience of action research and internal consultancy projects with organisations considering or implementing merger. Its aim is to help charities which are considering merger, or at the early stages of implementing one, be fully aware of the issues involved, the potential benefits and pitfalls, and the help available. Its main sections are:-

- **The context for merger:** a review of recent merger activity, and the wider public policy context
- **Forms of organisational collaboration:** merger is one of a number of a range of collaborative working options; the paper provides a useful digest of Mather's categorisation of five possible levels of engagement:-
 - joint benefit: general informal co-operation
 - joint project: a more defined collaboration on a specific project(s), with agreed goals, roles and consultation
 - joint management: a formal management structure is established to govern the shared activities
 - joint strategic development: a high degree of interdependency in developing future plans and priorities at whole-organisation level
 - full merger: combined legal form, governance and identity
- **Drivers:** The public policy environment and the influence of funding bodies can affect decisions to merge, but other factors are frequently present. These can include: the changing needs of users; need to present a unified voice to advocate for a particular group or need; organisational vulnerability (not necessarily immediate – could be longer-term); personal involvement and interest of key players; common organisational features and cultures; and inter-personal and inter-organisational relationships.
- **Stages in the merger process.** The paper identifies four (some of which may overlap):-
 - negotiation: identifying purpose, fit, extent of commitment and potential deal breakers
 - decision taking: agreed vision and model for organisation, consultation with key stakeholders, resolving power issues (Chief Executive, Board of new organisation), timescale and process for next stages
 - planning: including due diligence and transfer arrangements

- implementation
- **Critical success factors.** These include: clear purpose and vision; strong business case; good leadership; plans for the process and for the new organisation; readiness to adapt and compromise in pursuit of the overarching aims; strategic and organisational fit; managing different cultures; resources to support the merger process; recognising human factors (staff, trustees and volunteers' investment in their organisation); good communication; evaluating and reflecting on the process.
- **Deal breakers:** the paper identifies four key factors which might prevent mergers from happening:
 - culture
 - the balance of power (who provides the Chief Executive, the management team, the majority of Board members?)
 - resources and human factors: the cost in terms of time, energy and lost opportunities may outweigh the anticipated gain
 - opposition from key stakeholders – beneficiaries, key funders, founders, competitors
- **Benefits of merger:** the expected benefits need to be listed and, where possible, tested out (will there really be economies of scale?)
- **Key issues to be taken into account:** The paper sets out a number of key questions which organisations might benefit from addressing before making a firm decision about merger
 - Do the parties have the same objectives?
 - What do the parties hope to achieve through organisational collaboration? Can this only be achieved through a merger?
 - Is there a shared vision for what the merged organisation might look like, what its role might be, what services it might provide? If not, can this be developed?
 - Is there a good business case in terms of better services for end users of increased capacity to deliver services or other tangible benefits for the objectives of both organisations?
 - In what areas do the merger partners complement each other and where are they incompatible? Do the complementary factors outweigh the areas of incompatibility or are the latter major obstacles to merger?
 - What are the areas of organisational strength and weakness of each party?

- What is the 'bottom line' in the sense of what organisational features must be retained? Where is there scope for compromise?
- What are the hopes and fears of key stakeholders? How can these best be addressed?
- Who is likely to oppose the idea of merger and why?
- How will the merger partners cope with anxiety from staff, users and other stakeholders?
- How will the change process be managed?
- How will the key power issues be resolved?
- Who will be Chair and Chief Executive and how will Board and Management Team composition be determined?

Comment

This is an excellent, concise and clearly-written summary of the key strategic and organisational issues which face charities considering merger. It is an essential part of the resource kit for any Trustee or senior manager trying to think through what these issues mean for their organisation.

Within its chosen field It does many of the things the Warburton paper, "Mergers: A Legal Good Practice Guide" does with respect to legal issues. Unlike the Warburton document, however, it does not set out to provide a route map for organisations through the organisational/ managerial issues, and this is a gap that needs to be filled by another publication.

Due Diligence Demystified: What it is and how you manage it

Mike Caudrey; NCVO Collaborative Working Unit (38 page A4 hard copy)

Synopsis

This guide forms part of the Collaborative Working Unit's tools for small to medium sized organisations to explore and realise potential opportunities in collaborative working. It is pitched at entry-level and uses easily accessible language and a clear format. It responds to concerns that some organisations may be deterred from considering collaboration or merger because they don't fully understand what due diligence is about and others may hand the process over to external professionals at greater cost than is necessary. The aim, therefore, is to provide a deeper understanding of what due diligence involves and the tools to ensure it is approached efficiently and in the most cost-effective way.

Its main sections are:-

- **What is due diligence?:** A brief overview of the concept; the appropriate level of due diligence exercise for the organisations involved; an outline of the three elements of a due diligence exercise – financial, legal and strategic and operational; and a very brief discussion of who should carry out a due diligence exercise. An appendix includes an example due diligence confidentiality agreement for the organisations thinking about merger.
- **When to do it – the Deal Breakers:** Takes a step back to explore some of the things that might be too great a barrier to merger or collaborative working and that would render a potentially costly due diligence exercise futile.
- **What you need to do:** Sets out over 9 pages each area of due diligence with advice on the documentation and source of information needed; the tasks that need to be carried out; and the key questions that need to be answered under the three headings of financial, legal and strategic and operational due diligence.
- **The due diligence report:** Provides example headings for a report on due diligence. These are: executive summary; approach adopted and timing; financial backgrounds of Organisation A and Organisation B; Financial projections and forecasting; organisational structure; legal; key financial transactions, assets and liabilities; integration issues.
- **Interpreting the due diligence report:** A couple of paragraphs of advice – or rather caution – on the need to exercise judgement based on the findings of a due diligence exercise.
- **How much can you do in-house?:** Another short section which questions the skills needed to carry out due diligence exercise work in-house. An appendix provides a specimen tender to help procure whichever skills need to be sought from outside advisors and professionals.
- **Costs of due diligence:** A few pointers towards possible sources of funding for due diligence.

- **Due diligence for collaborative working:** Highlighting that much of the advice in the guide is applicable to collaborative working, but that a few additional questions need to be asked before embarking on a full due diligence exercise.

Comment

This is a useful contribution to due diligence. It is pitched at a basic level of understanding and provides a thorough overview of the issues that need to be considered. Its real strength is in the detailed breakdown of information, tasks and questions that need to be answered for each aspect of due diligence. It is weaker on how the information should be interpreted and would benefit from more detail around the balance between in-house and external support, as well as on costs.

A particular omission is its failure to point out the possibility that the same person or company could carry out the initial due diligence for both parties. If carefully managed this shouldn't present any conflict of interests and will save time and money as well as aiding transparency.

Essential reading for the early stages when merger is

Mix, Match, Merge

Moira Guthrie; Cass Business School (88 page A5 hard copy)

Synopsis

This report was published in 2000 under the Volprof Telethon Fellowship programme. Its aim is to combine a strategic planning tool with a "how to do it" guide, and it is aimed at trustees and managers. Its main sections are as follows:-

- **Why consider partnership?:** A brief and reasonably complete review of the key organisational, economic and environmental factors which drive most mergers.
- **Options other than merger.** Sets out the pros and cons of a range of other collaborative and outsourcing approaches.
- **Merger and takeover options.** Identifies three types of merger – horizontal, symbiotic and vertical, with a review of the pros and cons of each.
- **Selection of an appropriate option.** A brief review of the need for a vision of the future, an assessment of the current position, identifying potential partners, and the risks, costs and gains attached to choices between merger options.
- **Structure and control issues.** Covers the risks involved in partnerships, joint ventures and group structures; there is an appendix giving a checklist of issues to address in drafting a partnership agreement.
- **Formal checks on the potential merger partner.** Provides a useful and fairly comprehensive list of points to be checked at the feasibility stage covering strategic fit, constitutional/legal issues, financial assets, human

resources and culture. Also contains an appendix setting out an outline work programme for a formal due diligence exercise.

- **Culture.** Provides a checklist of items which might be used to surface the cultures of the two potential mergees, and a brief synopsis of the literature on ways of avoiding a clash of cultures and managing culture change.
- **Working towards merger.** Identifies six phases and suggests an outline timetable. Suggests that the joint work between merger partners is limited to the key issues in order to avoid overload, and to enable “integrative bargaining” to take place. Identifies work which has to be done separately by each merger partner including the management of change and stress.

Observations

Takes a common sense, fairly undogmatic line on most of the key issues (although makes a few dubious recommendations such as making the appointment of the Chief Executive subject to open advertisement). The checklists and appendices are useful, and the section on the significance of culture is the best in any of the available publications. Much stronger on the early, preparatory stages than on the implementation phase but is less so on the management of risk and the importance of leadership. Still well worth reading.

Out of print, but copies are available – free of charge – on request from Cass Business School;

gabrielle.cochrane.1@city.ac.uk

From elsewhere

In addition to these sources used for the literature review are one or two others that might be useful. The NCVO Collaboration Unit includes a number of documents and guides on its website and a list is included below as a further source of advice and support. The website page '[Should you collaborate? Key questions](#)' provides a whistlestop tour for organisations wishing to work together in 'a spectrum of ways from informal networks, through joint delivery of projects to full merger'.

NCVO's Collaboration Unit website – documents provided

[Case studies - ICT tools to support collaborative working](#)

[Case studies - joint working for public service delivery](#)

[Case studies - merger](#)

[Case studies - national organisations with local groups](#)

[Case studies - sharing back office services](#)

[Case studies - working together to achieve your mission](#)

[Collaborative Working Unit - Joint Working Agreements](#)

[Frequently asked questions](#)

[Model - joint working for public service delivery](#)

[Mergers: A Model of Collaborative Working](#)

[Model - national organisations with local groups](#)

[Model - sharing back office services](#)

[Model - working together to achieve your mission](#)

[Practical information and advice](#)

[Should you collaborate? Key questions](#)

[Staffing a Collaborative Project - Guidance for Voluntary and Community Organisations](#)

In addition, The Housing Corporation and the National Housing Federation have both stepped up their interest in the issue: the NHF devoted a conference to Mergers in the spring of 2006 and the Deputy Chief Executive of the Housing Corporation addressed the NHF annual conference on the issue later in September. The Housing Corporation has produced two reports that might be useful, although both narrow in their scope and as one of them

says: *'Whatever the Housing Corporation and many associations have so far stressed in terms of service delivery and efficiency – it is still the desire for business growth which is the key driver for merger activity.'* As such, these publications – whose titles are self-evident - may provide fewer crossovers to the VCS.

[The costs and benefits of groups, mergers and partnerships](#)

[Mergers, Due Diligence and Housing Associations: a good practice guide](#)

Section two – Component parts

In the previous section, some of the best publications were highlighted. However, there are sections in other documents that are also useful and this section picks apart the elements of merger and signposts towards a range of publications for each part of the merger process. Less detail is provided in this section of reports described more fully in Section One.

Technical terms

Whilst this guide has attempted to keep language as jargon-free as possible, the world of merger has its own technical language, particularly around legal terms. Good sources of technical terms are included in:

[Collaborative Working and Mergers: An Introduction \(CC34\)](#)

[Legal Issues In Charity Mergers](#)

Thinking about merging

- The CVAR publication, [Key Findings on Voluntary Sector Mergers](#), (see page *) was designed to help charities considering merger or at the early stages of implementation, and covers issues, pitfalls and benefits thoroughly, as well as a useful section on drivers.
- Similarly, [Mergers: A Model of Collaborative Working](#) is a useful [checklist](#) to consider at the outset.
- Bill Mather's [Merging Interests](#) report for Barings includes a chapter exploring 'Pathways to Merger' in which he presents a list of common problems with merger:

- it's permanent and irreversible;
- it has to conform to charity law;
- it's rarely an equal process;
- it requires significant resources;
- there are winners, losers, uncertainties and resistances; and
- it's easy to focus on assets and lose sight of liabilities.

He provides tools for two particular areas which he suggests those considering merger ought to look at:

- Incentive. What are the motivations and goals, and the most important issues to consider and explore later on? Who is driving it? There is an appendix with a sample Incentive Paper.
- Consideration. This is an audit by an organisation considering merger of its own position, readiness for merger and what it has to offer potential partners, ability to achieve its objects by other means, etc. There is an appendix containing headings for a "rapid assessment report" which provides a useful agenda.

- CVAR's other publication in the key reading list, [Success Factors in Nonprofit Mergers: Lessons from HIV/AIDS Agencies in the UK](#), provides useful information in the early sections:

It falls into three parts: a review of the relevant academic literature; a case study based on a multiple merger within the HIV/Aids sector which CVAR were involved in through an action research project; and some general propositions drawn from the two preceding sections.

- **Introduction:** this highlights the increasing prevalence of mergers in the UK voluntary sector, and the need for theories, knowledge and tools to help those who have to manage the merger process. In particular, descriptions of third sector mergers, analysis of the issues which arose, and ideas about good practice in dealing with them, adaptation of tools which exist in the business world or the creation of new tools tailored to the special needs of third sector managers, and criteria for evaluating the relative success of mergers in the absence of the financial performance indicators used in the business world.
- **The literature review.** Merger is a process with stages; these have been differently described in different papers, but the authors propose the four-stage model described in CVAR's "*Key Findings*" paper. They find that the stages following the decision to merge (planning and implementation) have been less well described – possibly because "*it's a one-off, irreversible process, and it is therefore rarely deemed worthwhile to reflect on it at a later stage*". The literature review threw up a number of key success factors at the planning and implementation stage:-
 - managing cultural integration/creating a new culture: resolving differences by developing trust and ensuring equality in the merger process is an important contributor to later success
 - consultation with stakeholders and keeping them informed once the decision has been made
 - sensitive management of staffing issues/ responding to the anxieties of those caught up in the merger process
 - strong leadership: championing the partnership while responding to anxieties about roles, status, resources, and ensuring the smooth running of day to day operations (lack of strong leadership was found to be a common thread running through aborted mergers)
 - keeping a balance between financial issues and those of organisational strategy, personnel and culture – avoiding financial tunnel vision

- The Housing Corporation/CIH report [The costs and benefits of groups, mergers and partnerships](#) may also provide useful comparison.

Legal powers

Obvious candidates are the Charity Commission and Charity Law Centre publications:

- [Collaborative Working and Mergers: An Introduction \(CC34\)](#)
- [Mergers: A Legal Good Practice Guide](#)

The companion volumes to both of the above documents may be most useful in their survey and case study examples to explore the range of legal options that might be appropriate:

- [RS4 - Collaborative Working and Mergers](#)
- [Legal Issues In Charity Mergers](#)

Forms of merger

Again, this inclines towards the legal and the Charity Commission and Charity Law Unit are good places to start.

- [Collaborative Working and Mergers: An Introduction \(CC34\)](#)
- [Mergers: A Legal Good Practice Guide](#)
- The CVAR publication, [Key Findings on Voluntary Sector Mergers](#) (see page *) uses Bill Mather's five levels of engagement included in his [Merging Interests](#) report. In addition [Mergers: A model of collaborative working](#), in conjunction with other documents on the NCVO Collaborative Working Unit, can provide broad coverage.

Process of merger

Many publications cover process to a greater or lesser degree.

- In a section on '*Form and Process*', [Legal Issues In Charity Mergers](#) a discussion of:

when charities do and don't have the powers to merge, and when Charity Commission consent is needed; none of the mergers in the study failed to go ahead because of insurmountable difficulties, but some needed to take a different form from the one they originally intended; there are some useful case study illustrations. It also covers: key learning points on the establishment of merger committees and appointment of neutral facilitators; the differences between charity mergers and those in the commercial sector and the selection of advisors (when they should be brought in and whether each side needs separate advice); the involvement of the Charity Commission; issues which arise where charities have memberships; and the size of the merged Board.

- *Managing mergers: a guide* uses case studies to:

cover four successful mergers and one which failed to go through to completion. In the former cases they are based on interviews with the Chief Executive of the merged organisation; in the latter with one of the Chief Executives of the organisations that failed to merge. Each covers: the background to the merger discussions; the approach and who made it; the exploratory phase; the pre-merger planning and implementation phase; the post merger integration phase. They also look at the crunch points which arose and how these were resolved (or why they were not), and include a template for the merger process and a list of "top tips" provided by the interviewees.

Process is also covered in:

- [Collaborative Working and Mergers: An Introduction \(CC34\)](#)
- [Mergers: A Legal Good Practice Guide](#)
- [Legal Issues In Charity Mergers](#)

Due diligence

As James Sinclair Taylor states in [Mergers: A model of collaborative working](#):

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, eg. restricted funds or permanent endowment
- income sources, eg. committed giving, grant funding, contracts held or under negotiation
- employment practice (including TUPE, Transfer of Undertakings Regulations)
- policies & procedures

Due diligence issues are central to mergers and thus covered in many publications:

- [Due Diligence Demystified: What it is and how you manage it](#) is a recent NCVO Collaboration Working Unit publication which provides a comprehensive overview of the issues for consideration when undertaking a due diligence exercise (see review).
- [Mergers: A Legal Good Practice Guide](#) explores due diligence as a two-stage process (see review)
- The Charity Commission guidance on due diligence is in [Collaborative Working and Mergers: An Introduction \(CC34\)](#)
- *The Urge to Merge*, an out of print case study exploration of a merger in the homelessness sector published by Homeless Network, includes an excellent due diligence list also compiled by James Sinclair Taylor
- **Employment-related due diligence** is specifically covered in *Mix, Match, Merge?*; [Mergers: A Legal Good Practice Guide](#); and [Legal Issues In Charity Mergers](#)
- **Asset-related due diligence** is covered in [Mergers: A Legal Good Practice Guide](#) and [Legal Issues In Charity Mergers](#)
- **Funding-related due diligence** is covered in [Mergers: A Legal Good Practice Guide](#)

- There is also a Housing Corporation report on [Mergers, Due Diligence and Housing Associations: a good practice guide](#)

The importance of culture

The rather less tangible issue of 'culture' receives less focus in the literature, although is a clear undercurrent when exploring case studies.

- [Key Findings on Voluntary Sector Mergers](#) describes culture as being one of four key 'deal breakers' that can prevent mergers from happening.
- Moira Guthrie's, *Mix, Match, Merge?* provides a checklist of items which might be used to surface the cultures of two potential mergees, and a brief synopsis of the literature on ways of avoiding a clash of cultures and managing culture change.

The role of the Chief Executive

Several publications also address the key issue of the role of each and both Chief Executives, and the impact of their roles on the process.

- *Managing mergers: a guide*, the ACEVO publication looks at mergers from the perspective of the Chief Executive. The main conclusions to emerge were that:

- Each merger is a unique and complex process; they are non-linear, and there is no standard step-by-step template that can be followed
- They impose heavy workloads on top of the full-time business of keeping both of the prospective partner organisations running; they are also prone to sudden events.
- They therefore make high demands on the key players, and require large amounts of energy and staying power;
- Chief Executives can often be the strategic and operational fulcrum of the merger process, and in addition to the workload demands face professional and personal pressures including "positional stress" (carrying information which they are not able to share with colleagues, uncertainty over their own future which they cannot discuss with Trustees) and isolation; there is a lack of effective networks to support them through this process.
- Mergers require special forms of collaboration; choice of an appropriate partner requires an understanding of the sector, communication skills and trust-generating styles

- At some point in each merger process, trust becomes a key factor, and knowing when to trust is an essential skill
- Mergers will leave a number of trailing wires which need to be tidied up in the post-merger integration phase; keeping the momentum going in the period after the merger is a key success factor, but given the demands which the merger process has placed on the key players can be easier said than done

- [Key Findings on Voluntary Sector Mergers](#) also pays attention to the issue, placing particular emphasis on how the Chief Executive (as well as the Chair and Board) will be recruited and structured, and the impact this has on the balance of power between merger partners.
- [Collaborative Working and Mergers: An Introduction \(CC34\)](#) includes a section on the role of the Chief Executive in the merger process.

Examples of success factors

Several publications attempt to compile lists of factors most likely to lead to successful merger.

- [Key Findings on Voluntary Sector Mergers](#) lists success factors as: clear purpose and vision; strong business case; good leadership; plans for the process and for the new organisation; readiness to adapt and compromise in pursuit of the overarching aims; strategic and organisational fit; managing different cultures; resources to support the merger process; recognising human factors (staff, trustees and volunteers' investment in their organisation); good communication; evaluating and reflecting on the process.
- Success at the planning and integration phase is covered in the CVAR document, [Success Factors in Nonprofit Mergers: Lessons from HIV/AIDS Agencies in the UK](#) which lists them as:

- managing cultural integration/creating a new culture: resolving differences by developing trust and ensuring equality in the merger process is an important contributor to later success
- consultation with stakeholders and keeping them informed once the decision has been made
- sensitive management of staffing issues/ responding to the anxieties of those caught up in the merger process
- strong leadership: championing the partnership while responding to anxieties about roles, status, resources, and ensuring the smooth running of day to day operations (lack of strong leadership was found to be a common thread running through aborted mergers)
- keeping a balance between financial issues and those of organisational strategy, personnel and culture
 - avoiding financial tunnel vision

- [RS4 - Collaborative Working and Mergers](#), the older Charity Commission publication, lists:

- cooperative, open working and communication
- agreed structures for communication and negotiation
- early agreement on key issues (name/brand, structure of Board, Chief Executive)
- unity in Trustee body
- cultural integration
- clear statement of vision and desired outcome
- a carefully-managed process;
- speed
- early consultation with stakeholders
- cutting through individual concerns to reach key strategic issues

As these three examples show, factors influencing success cover a huge amount of ground and are likely to shift in importance according to the precise environment and circumstances of each merger.

Useful components in a merger ‘starter kit’

Out of the many sources used for this guide, the following would comprise a solid starter kit.

The essentials

- [Mergers: A Model of Collaborative Working](#) NCVO
- [Key Findings on Voluntary Sector Mergers](#) CVAR, Aston
- [Mergers: A Legal Good Practice Guide](#) Charity Law Unit, Liverpool
- [Collaborative Working and Mergers: An Introduction \(CC34\)](#) Charity Commission
- [Mix, Match, Merge](#) Cass Business School
- [Due Diligence Demystified](#) NCVO

Useful background reading

- [Legal Issues In Charity Mergers](#) Charity Law Unit, Liverpool
- [Success Factors in Nonprofit Mergers](#) CVAR, Aston

To be mined for useful elements

- [Regulatory Study 4 - Collaborative Working and Mergers](#) Charity Commission
- [Merging Interests](#) Baring Foundation
- *Managing Mergers – A Guide* ACEVO
- *The Urge To Merge* Homeless Link

A last word on gaps

There remain some gaps in what is available. In particular, there is a need for **a good route map covering the organisational/managerial aspects of merger** in the same way that the Liverpool Charity Law Unit does for legal issues. This would need (among other things) to include:-

- a section covering the realities of merger: i.e. they are complex, not linear processes which make high demands on the individuals and organisations involved, and in which soft skills are as important in managing the process as observance of the technical and legal processes; organisations which don't understand this and plan their approaches accordingly are more likely to fail
- a recognition of the fact that there are different types of merger and that they need to be approached in different ways (e.g. "rescue" mergers and peer-to-peer mergers both need due diligence processes, but they might have very different emphases – simply approaching it as a "by the book" exercise may mean that vital issues are missed)
- a list of key decision issues and an illustration of the options that might be available at each (e.g. how might organisations approach the "two Chief Executives" issue? What are the pros and cons of the various options?)
- a broader discussion of due diligence and risk than is contained in the existing literature – similar to the checklist from *The Urge To Merge* but with a wider commentary
- a comprehensive glossary of terms which pulls together the best of what is available in the other publications (many of which have glossaries – some better than others – none of them complete)

The other addition which could usefully be made to the literature is **a digest of the learning from the various available pieces of research on what are the critical factors in a successful merger**. The list in the CVAR *Key Findings* document is a good starting point, but there is more work to be done to extend and update it; in particular this is an area where it might be fruitful to look at some of the accounts of what has worked in the commercial sector to see if there are lessons which might successfully translate between the two sectors (for example, Habeck, Kroger and Tram).

Most of the sources included in this guide also signpost towards further sources of information, so a final note of caution may be in order. As most of the publications relating to the VCS reiterate, each organisation considering a merger has its own particular set of drivers and triggers and each merger is unique. There is no right or wrong way of carrying out the process, but the costs of failing to cover all the bases may be high. We hope this guide provides a useful starting point.

Title	Author	Publisher /journal	Ref	Date	No of Citations	Available in
Books/single publications - commercial sector						
HR Know-How in Mergers and Acquisitions	Cartwright & Cooper	Institute of Personnel and Development, London		2000	1	
After the mergers: Seven rules for successful post merger integration	Habeck, Kroger & Trum	Prentice Hall Financial Times, London		2000	1	
The Human Side of Mergers and Acquisitions: Managing Collisions between People, Cultures and Organizations	Buono & Bowditch	Jossey Bass, San Francisco		1989	1	
Academic journal articles						
Critical success factors for merger in the UK voluntary sector	Cowin & Moore	Voluntas	Vol 7, no 1, pp66-86	1996	5	BL 9254.57780
Organisational Metamorphosis: a study of eighteen nonprofit mergers, acquisitions and consolidations	Singer & Yankey	Nonprofit Management and Leadership	Vol 1, no 4, pp357-369	1991	5	BL 6117.34615
Merging Nonprofit Organisations: analysis of a case study	Schmid	Nonprofit Management and Leadership	Vol 5, no 4, pp377-391	1995	4	BL 6117.34615
Merger as a Strategic Response to Government Contracting Pressures	Golensky & DeRuiter	Nonprofit Management and Leadership	Vol 10, no 2, pp137-152	1999	2	BL 6117.34615
Merger and Acquisition Activity Between Nonprofit Social Service Organizations	Wernet & Jones	Nonprofit and Voluntary Sector Quarterly	Vol 21, no 4, pp367-380	1992	2	Out of print
Identity versus culture in mergers of equals	Zaheer, Schomaker & Larsson, Driver, Holmqvist & Sweet	European Management Journal	Vol 21, no 2, pp185-191	2003	1	
Career dis-integration an re-integration in mergers and acquisitions	Larsson, Driver, Holmqvist & Sweet	European Management Journal	Vol 19, no 6, pp609-618	2001	1	
HR issues and activities in mergers and acquisitions	Schuler & Jackson	European Management Journal	Vol 19, no 3, pp239-253	2001	1	
Merger as Marriage: communication issues in postmerger integration	Dooley & Zimmerman	Health Care Management Review	Vol 28, no 1, pp 55-67	2003	1	
Managing ambiguity: merger activity in the nonprofit housing sector	Mullins	International Journal of Nonprofit and Voluntary Sector Marketing	Vol 4, no 4, pp349-364	1999	3	
Making mergers and acquisitions work: What we know and don't know - Part 1	DiGeorgio	Journal of Change Management	Vol 3, no 2, pp134-148	2002	1	
Mergers and Health Care Organisations	Shaw	Journal of Health Care Finance	vol 29, no 3, pp28-37	2003	1	
A cross method of analysis of the impact of culture and communications upon a health care merger	Applebaum & Gandell	Journal of Management Development	Vol 22, no 5, pp370-409	2003	1	
Leadership style and post merger satisfaction	Covin, Kolenko, Sightler & Tudor	Journal of Management Development	Vol 16, no 1, pp22-33	1997	1	
The role of funders in nonprofit merger activity	Sargeant & Jay	Journal of Marketing Management	Vol 18, pp953-970	2002	1	
Integrating strategic, organisational and human resource perspectives on mergers and acquisitions	Larsson & Finkelstein	Organization Science	Vol 10, no 1, pp1-26	1999	1	???
Organizational marriage: 'hard' versus 'soft' issues?	Cartwright & Cooper	Personnel Review	Vol 24, no 3, pp32-42	1995	1	
Mergers, MNEs and innovation: the need for the new research approaches	Berggren	Scandinavian Journal of Management	vol 19, pp173-191	2003	1	
Merger in the British Voluntary Sector: The example of HIV/AIDS agencies	Harris, Harris, Hutchinson &	Social Policy and Administration	Vol 36, no 3, p291-305	2002	1	
Human resourcing following a merger	Kerr	The International Journal of Career Management	Vol 7, no 2, pp7-9	1995	1	

Merger: A Brief Guide to the Literature for Voluntary and Community Sector Organisations by Alan Cripps and Mary Carter

Title	Author	Publisher /journal	Ref	Date	No of Citations	Available in :
Trade/business journal articles						
Avoiding the seven deadly sins of postmerger integration	Feldman	Bank Accounting and Finance	Gale Group 2000 pp1-4	2000	1	No longer in :
Implementing Merger Objectives	Allison	Charities Management	Spring 1998, pp18-21	1998	2	No longer in :
When take-overs and Mergers might be the Best Solution	Mather	Charity	Oct-97	1997	1	No longer in :
M&A needn't be a loser's game	Selden & Colvin	Harvard Business Review	June 2003, pp70-79	2003	1	
Your Best M&A Strategy	Rovit & Lemire	Harvard Business Review	March 2003, pp16-17	2003	1	
Managing your integration manager	Shelton	McKinsey Quarterly 2003 Special Edition	Issue 2, pp80-89	2003	1	???
Making Charity Mergers Work	Hill	NCVO News	May-00	2000	1	Back copies I will send a pt
Charity Mergers: Steering a safe course through the legal waters	Wethered	NGO Finance	May-99	1999	2	???
Stopping Short of Wedding Bells: But Getting Acquainted for Mutual Benefit	Wethered	NGO Finance	July-Aug 1998, pp22-23	1998	2	???
Merging into a Technicolour Sunset: How Charities Get Together	Phillips	NGO Finance	Oct-Nov 1995, pp20-22	1995	2	???
Merging into the Foreground: Is there Strength in Smaller Numbers?	Wethered	NGO Finance	Dec 1999, pp56-57	1999	1	???
Life after merger: Ensuring the Succession	Phillips	NGO Finance	Dec 1995, pp14-16	1995	1	???
Shining through a merger	Boardman, Kelpe, Straub & VanFleet	Nursing Management	Vol 34, no 5, pp45-48	2003	1	
Amalgamate by the Book	Piper	The Lawyer	9th June 1998, p19	1998	2	No longer in :
Mergers Without Shareholders	Phillips	The Tax Journal	20th June 1996, pp5-6	1996	1	???
Mergers Make Sense	Burgess	Third Sector	16th Sept 1999	1999	1	No longer in :
Making Mergers Manageable	Butler	Third Sector	1st Oct 1998	1998	1	No longer in :
Charity Chiefs Set Against Merging	Trowers & Hamlins	Third Sector	30th Oct 1997	1997	1	No longer in :
Charities Merging Ahead	Thody	Third Sector Trustee	Sep-98	1998	1	No longer in :