# Facing a challenging financial future

November 2015

## A guide for trustees and committee members of voluntary and community sector organisations

The voluntary and community sector faces increased demands for their services and continues to be affected by the dramatic cuts in public sector funding. Many organisations employing staff have relied on grants or contracts from local authorities, health bodies, and other government schemes and initiatives.

Most organisations will be affected financially, and some will close. Trustees and committee members face difficult decisions in the coming weeks, months and years. They are ultimately responsible for the organisation and potentially liable for any debts that an organisation incurs.

This guide has been produced by the Voluntaryworks Consortium for organisations working in Bedfordshire and Luton.

Disclaimer The information in this document is a general guide. It is not a complete statement of the law and is in no way intended as a substitute for proper legal advice. No liability can be taken for actions taken, or not taken, on the basis of information in the leaflet.

**The Voluntaryworks Consortium** delivers infrastructure support services to the voluntary and community sector in Bedfordshire and Luton.

The Consortium provides:

- Advice on funding and governance
- Networking and training opportunities
- A regular email update
- Opportunities for networking
- Volunteer recruitment and management support

Part of the Consortium's role is to maintain an overview of the size of the sector, the issues that affect it, and respond where possible to its needs.

Voluntary works

# Introduction

This guide has been developed to help trustees and committee members to identify and manage risks. We would recommend that all boards spend time considering some of the following questions:

- What is our financial position? Is the level of reserves we hold sufficient? What is our predicted profit/loss for this and future financial years? Are we financially viable?
- What does the future hold? Where is our future income likely to come from? How secure is that funding?
- What is best for our beneficiaries? What course of action is in their best interest?

Throughout this guide we refer to a number of other publications and suggest you consult these where appropriate. Some Voluntaryworks partner organisations have reference copies of these publications in our resource library for organisations to access.

Voluntaryworks is a consortium of local organisations (see below) working to promote and support the voluntary and community sector in Bedfordshire.

- Bedfordshire Advice Forum
- Bedfordshire and Luton Community Foundation
- Bedfordshire Rural Communities Charity (BRCC)
- Community & Voluntary Service (CVS)
- The Learning Partnership Bedfordshire and Luton Ltd
- Voluntary and Community Action
- Voluntary Organisations for Children, Young People & Families (VOCypf)

Further information can be found at www.voluntaryworks.org

We hope that you find this guide useful.

## Some options to consider:

This booklet gives a brief outline of four of the main options that trustees may have to consider having undertaken a review:

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| Reducing costs | What can you do to tighten your belt and reduce your expenditure to make the money go further? |
| Diversifying Income | An explanation of the varying methods of diversifying an organisation's income ! could you generate funding in a different way? |
| Merging and Collaborative Working | How joining up with other organisations might be the best way forward to ensure your users are supported in the future. |
| Closing Down | If you have to close an organisation, how to go about it properly, and minimise the impact on staff and users. |

# Reducing Costs

Many organisations may have to look at implementing a leaner business model to survive the next few years. Advance planning, consultation and communication with all stakeholders is critical to successfully 'cutting your cloth' to fit.

Many organisations will need to consider carefully what activities they are carrying out. If you are not being paid to carry out some activities, can you afford to keep on doing them?

## Some options to cosider

**Consult:** Ask the views of your staff and users they may have some great ideas about how the organisation could run more efficiently and save costs.

**Reduce hours:** You could agree with some or all staff to reduce hours (and therefore pay as well) for a specific period. Part time working may well be preferable to being redundant.

**Offer unpaid leave:** Some staff may welcome a period of time off, knowing that they are likely to have a job at the end of the period.

**Redeployment:** Could you move staff from quieter areas of your organisation, if there are any, to cover needs elsewhere, to help keep staff motivated and save the costs of recruitment?

**Freeze or cut pay:** A pay freeze or a pay cut is likely to be preferable to jobs being lost. You would need to specify whether the pay cut was intended to be permanent or for a specific period.

**Use some of your reserves:** Now may be the time to use some of your reserves (if you have any!). Using reserves shouldn't be an alternative to seeking appropriate cost savings, though, or a means of avoiding tough decisions.

**Maximise office space:** Can you reduce the office space you are renting, or rent out space that you do not need. Could staff work from home?

**Shared services and staff:** Consider working with other organisations to share 'back office' or other services. Is it more efficient to share a member of staff to carry out similar activities? Can you reduce costs by bulk buying supplies?

**Redundancies:** It is sensible to develop a strategy for redundancy so that it is there when you need it. Make sure you understand the law, have thought about things in advance and establish a procedure to be used. In particular, make sure you consult about redundancies and use fair and objective selection criteria.

## Find out more:

There are a number of legal obligations you will need to follow if you are contemplating redundancies amongst your workforce. Have a look at the following sources of information:

- *The Good Guide to Employment*, published by NCVO. The Guide contains a chapter on managing redundancy.
- The ACAS advisory booklet, *Redundancy Handling*, available from www.acas.org.uk/media/pdf/1/1/Redundancy handling accessible version.pdf
- ACAS also have an advice leaflet, *Managing in difficult times*, available from www.acas.org.uk/media/pdf/8/6/Recession_leaflet_v5.pdf
- *Russell Cooke Voluntary Sector Legal Handbook* Chapter 35. A reference copy is available at CVS
- Organisations should be aware of their responsibilities under equalities legislation when making decisions to reduce staff/services, close an organisation or make redundancies. Guidance from the Equality and Human Rights Commission, *What equality law means for you as an employer: dismissal, redundancy, retirement and after a worker has left is available from* www.equalityhumanrights.com /publication/what equality law means you employer dismissal redundancy retirement and after worker has left

# Diversifying Income

Has your organisation taken advantage of all the different sources of income? From charitable donations at one end of the range, through grants, service level agreements and contracts, to social enterprise activity, trading goods and services at the other.

**Why diversify your income?:** A variety of sources of funding can reduce the impact of some drying up, especially if you are reliant on one or two particular funders. Every organisation is unique, so diversifying your funding streams is dependent on your particular circumstances, but this could be the way to a more secure financial future without sacrificing independence or mission.

## Different types of funding

**Funding from donations:** There are now a huge number of ways people can donate to your organisation, ranging from collection tins, raffles and lotteries to legacies and payroll giving. Tax effective giving, including Gift Aid, can be used to maximise donations.
Funding from grants: Grants are important but are often restricted, and finding and applying for grants takes time. Grant funding is changing, with increasing levels of competition and some funders are now preferring to offer contracts or loans. Grant funding can come from grant making trusts, the national lottery or local authorities.

**Funding from contracts:** The voluntary and community sector has opportunities to contract usually to deliver public services. Contracts are earned income normally secured as a result of a commissioning/ tendering process and carry legal obligations so need to be entered into with proper consideration; however they can be a great way to fund your work where appropriate opportunities exist.

**Funding from trading:** Increasingly, many charities are developing trading activities that directly relate to their charitable objects. There are lots of benefits associated with trading when it is aligned with the social purpose of the organisation. Income from this type of trading is unrestricted, which means that you are free to choose how you use any surplus. Combined with other sources of income, trading can contribute to the long term sustainability of your organisation. However, trading can also expose your organisation to risks and liabilities. These risks are not just financial; there are also risks to the reputation of the organisation if the trading activities are in conflict with its social purpose.

## Find out more:

Any voluntary group that earns most of its income through trade and contracts could choose to call itself a social enterprise.

- The National Council for Voluntary Organisations Sustainable Funding Project
  www.ncvo vol.org.uk/sfp

- Charity Commission booklets
  CC37 Charities and Public Service Delivery, available from: www.gov.uk/government/ publications/charities and public service delivery an introduction cc37

- CC35 Trustees, Trading and Tax available from: www.gov.uk/government/publications/ trustees trading and tax how charities may lawfully trade cc35

# Merging and Collaborative Working

Joining forces with another charity, either by working collaboratively or merging, may be the best way to ensure that your service users receive support in the long term.

**Why consider a collaboration or merger?**

Through collaboration, organisations can often make economies and gain increased organisational stability. They can benefit from knowledge, good practice and information sharing and also sharing risk.

Funders and commissioners often specify that they want to see partnership working in the services they fund. Organisations may need to collaborate to access larger and more complex public service contracts that otherwise may not be available to them.

Service users can benefit from a more joined up approach to the services they receive. The Charity Commission encourages merger and collaboration, especially where services to the public will be better served.

## What steps should I take?

**Do you have the power?:** Check governing documents to ensure all parties have the relevant powers. You may need to have the power to merge and the power to work in cooperation and partnership with other charities. If you want to merge, does your governing document give trustees the power to wind up the charity and pass the assets over to another charity with a similar purpose?

**Get together:** If you want to explore a merger or collaborative venture then you will need to talk to the other parties concerned to explore the potential benefits, and the advantages and disadvantages. You might do this at a meeting held with the support of an independent facilitator.

**Do your homework:** Each party should carry out 'due diligence' which involves examining all the relevant aspects of each of the partners' business to ensure the respective boards of trustees know everything they need to know before making the final decision whether to collaborate/merge.

**Stay together:** You may want to form a joint working group, consisting of representatives from all the parties involved with the delegated power to make decisions to oversee the venture. It's important to have a joint working agreement to deal with any sticking points that arise, and ensure that appropriate actions are taken.

**Keep everyone informed:** It is important that any working group regularly reports progress back to the boards of trustees and that other stakeholders are kept informed at appropriate times.

## Find out more:

**Locality:** 'Collaboration for communities: Giving power to partnership is a guide through the several stages of supporting a collaborative venture: www.locality.org.uk/resources/collaboration communities giving power partnership/

**NCVO:** have a wiki, covering all aspects of collaboration, including merger on their KnowHowNonProfit website: www.knowhownonprofit.org/organisation/collaboration

**Charity Commission:** have produced guidance about both merger and collaborative working, expressly written for trustees and senior staff (see below for details).

- There are a number of useful publications by the Charity Commission:
- **CC34 'Collaborative Working and Mergers':** www.gov.uk/government/publications/collaborative working and mergers an introduction cc34
- **'Choosing to Collaborate:** Helping you succeed': www.gov.uk/government/publications/choosing to collaborate how to succeed
- **'Making Mergers Work:** Helping you succeed': www.gov.uk/government/publications/making mergers work helping you succeed

**Cabinet Office:** produced a guide on working in a consortium for third sector organisations involved in public service delivery: www.gov.uk/government/publications/working in a consortium

# Closing Down

Regrettably, sometimes the only option is closure. This guide explains the issues organisations, primarily charities, need to be aware of when deciding whether to close, and what to do if they have to close.

Organisations may need to consider closing if they can no longer continue because of reduced funding. If your organisation can no longer pay its debts, you will certainly need to know how to manage closing down properly. Parts of this process will also be relevant to organisations that are merging and transferring all their property into another charity.

An explanation of the terms used to describe the stages of closing down a charity:

“Winding up” is used to describe the process of stopping activities and services, dismissing staff, closing premises, paying bills and all the other things that need to be done when closing a charity.
“Liquidation” is the term used for the formal process of selling or disposing of assets this can be voluntary or compulsory and the process is different depending on whether your charity is also a company or not. When a charitable company reaches the end of its useful life, for example because it can no longer pay its debts, the Official Receiver or an insolvency practitioner will be appointed liquidator to wind up the charity's affairs, realise its assets and distribute the proceeds to the creditors. For an unincorporated charity it is up to the trustees to carry out the orderly winding up of the charity.
“Dissolution” is the point in time at which the organisation ceases to exist.

**How to make the decision:** You may have noticed some early warning signs such as regularly having to spend reserves because incoming resources are not enough to meet all of the charity's commitments, or pressure from creditors who are chasing overdue payments.
Identify all the charity’s assets and liabilities. To work this out, you will need a detailed cash flow forecast showing anticipated receipts and payments.
Decide whether the charity can pay its debts as they fall due and whether the charity has enough resources to meet all its immediate liabilities and continue to do so.
Some new liabilities only arise when the decision is made to close don’t forget about redundancy costs for staff, costs you may incur to dispose of assets and professional charges.

**If your charity is a company:** When the directors of a charitable company know, or ought to know, that there is no reasonable prospect of avoiding insolvent liquidation they must take every step necessary to minimise the potential loss to the company's creditors. This may involve cutting down or stopping some or all of the charity's activities. You can voluntarily place the company into liquidation. Compulsory liquidation normally only happens when a creditor forces it to happen. Either way, once a charitable company is being wound up it is placed under the management of an insolvency practitioner as liquidator. It is then too late for the directors to take action of their own to bring the charity out of insolvency.

**If your charity is not a company: The** decision to wind up an unincorporated charity will normally be taken voluntarily in accordance with the provisions of the charity's governing document. Although unincorporated charities cannot be compulsorily wound up, their trustees may face legal demands from creditors in relation to liabilities that they have incurred on behalf of the charity.

Where the trustees have no reasonable prospect of avoiding insolvency, it is in their own financial interests to ensure that, by cutting down or stopping some or all of the charity's activities, there will remain in the charity sufficient funds to indemnify the trustees against the cost of meeting all the debts and liabilities which they have incurred in the administration of the charity.

## What to do next:

The procedures to follow are different depending on whether the charity is a company or unincorporated, and whether the charity is solvent (able to pay current debts) or insolvent.

- **Check the charity's governing document** your constitution, trust deed or memorandum and articles. You may have a power of dissolution in your governing document which will specify what you must do to wind up the charity and also what you must do with any remaining assets. Your dissolution clause may specify that you need consent from the Charity Commission, in which case you must request this before going ahead.
- If there is no dissolution provision in your governing document, you should seek the advice of the Charity Commission.
- If you have a permanent endowment, the rules are more complicated and you should check the Charity Commission guidance and your governing document for more information.
- **Staff notice and redundancy payments:** You will need to give any employees a precautionary or actual notice of redundancy allowing for the proper notice period. You may also need to set money aside to make redundancy payments. See Chapter 35 of the Russell Cooke Voluntary Sector Legal Handbook for details.
- **Future legacies:** Mechanisms need to be put in place to ensure that any future legacies that may be received are still applied to those beneficiaries for whom the money was intended.
- **Accounting records:** You must make arrangements for the charity's accounting records to be preserved and specify to the Charity Commission how these can be accessed. For an unincorporated charity, accounting records must be preserved for six financial years from the accounting period they cover; for a charitable company, the period is three years.
- **Pensions:** If you have an occupational pension scheme, get advice from your pension provider, accountant and legal adviser before winding up. You may have to pay into the scheme to avoid a deficit.
- **Restricted funds:** Grants or donations the charity has received for use for a specific purpose must be returned to the grantors or donors, or else the grantors or donors must agree to the way the assets will be treated.
- **Liability:** Trustees remain responsible for decisions made during the period they held office.

## Find out more:

- There is excellent guidance in the Russell Cooke Voluntary Sector Legal Handbook Chapter 24: Financial Difficulties and Winding Up.
- See Charity Commission publication CC12 Managing financial difficulties and insolvency in charities at: www.gov.uk/government/publications/managing financial difficulties insolvency in charities cc12
- All registered charities should read the Charity Commission guidance on how to close a charity at https://www.gov.uk/guidance/how to close a charity
- If your charity is a company, you should read Companies House guidance GP08: Liquidation and Insolvency at www.gov.uk/government/publications/liquidation and insolvency. Chapter 5 deals with members voluntary liquidation (when the company is solvent) and creditors' voluntary liquidation (when the liquidation is still voluntary but the company cannot pay its debts). Chapter 6 deals with compulsory liquidation.
- Organisations should be aware of their responsibilities under equalities legislation when making decisions to reduce staff/services, close an organisation or make redundancies. Guidance from the Equality and Human Rights Commission, What equality law means for you as an employer: dismissal, redundancy, retirement and after a worker has left is available from www.equalityhumanrights.com/publication/what equality law means you employer dismissal redundancy retirement and after worker has left

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