Top tips for managing legacies when merging

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> “If you have substantial legacy income, it may be worth keeping the charity in existence as a ‘shell’”

One often overlooked element of the merger process is how to protect your legacy income.

If, as part of the merger, Charity A’s assets are likely to be transferred to another charity – Charity B – legacies to Charity A may fail. The problem generally arises where Charity A’s supporter has made a legacy in a will signed before the merger – but dies after the merger has taken place.

There’s no one-size-suits-all solution to this problem, but there are a number of steps you can take to put the merging charities in the best possible position.

What are your options?
There are two main routes to deal with legacies post-merger:

1. Wind up Charity A and register the merger on the Charity Commission’s Register of Mergers

This gives you the least administration going forwards as legacies to Charity A can be paid by executors straight to Charity B. However, this isn’t fool proof, as it’s not uncommon for the wording of the will to mean the legacy would be lost under this option as Charity A has officially ceased to exist.

2. Keep Charity A in existence as a so-called ‘shell’ charity

By not winding up, Charity A remains in existence and is readily identifiable by executors looking to pay out a legacy. However, this comes with an ongoing administrative burden.

Whichever option you choose, a key to success is clear communication with your donors: make sure they know the merger is taking place and how legacies should be drafted in their wills/codicils.

Before you merge

Key questions you’ll need to consider prior to any merger are:

- Do legacies make up a substantial part of your charity’s total annual income?
- Do you have the administrative resource to run a shell charity?
- Is it relatively easy to contact the charity’s donors who may plan to leave a legacy?

If legacies make up a small part of your charity’s annual income, it may be worth the risk to simply wind up and put the merger on the Register of Mergers.

If legacies are substantial income for your charity, it may be worth the ongoing administrative upkeep to keep the charity in existence as a shell to preserve all future legacies.

What if it goes wrong?

Many times, when we advise on a legacy dispute, part of the background involves a merger, so it does pay to plan for this eventuality. We have lots of experience advising on the best option for legacies when a merger is being considered; as well as unpicking complications arising from a historic merger.

If your charity is in legacy limbo, please get in touch.

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