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School Mergers

With economic conditions remaining tough, it is likely that many Heads and Governing Bodies have by now considered who their possible merger partners might be. Anecdotally, the most common reason to consider merger is in response to financial crisis. There are other schools who are using the financial situation to ‘acquire’ competing schools or who are coming together in federated structures to benefit from more dynamic and strategic leadership and achieve efficiencies.

Whilst mergers between independent schools seem to be coming more common, for many Heads and Governing Bodies, their school merger will be the first that they have encountered. This Article provides an outline of the steps to merger for charitable schools and highlights some of the most common problems.

The best laid plans

Research from the commercial sector reveals that only one-third of private sector mergers deliver any enhanced value for shareholders. The reasons for failure of a merger are often poor strategic rationale, lack of planning and an unrealistic expectation of the synergies and savings that can be made. Thorough planning for both pre and post merger can greatly improve the prospects of success.

Clear Rationale

Be clear from the outset why you are considering merger. How would a merger be in your School’s best interests and how would it enhance the education of your pupils? You will need to be certain of the case for merger, so that later in the process you are able to explain it clearly to parents and staff - who in some cases may be blinkered by a tribal loyalty to the School.

Avoiding panic and leaching of value

Confidentiality is essential. From the outset, the two Governing Bodies need to manage the information flows to ensure that news of the merger will not leak. Often the two Governing Bodies will appoint two or three representatives to sit on a Working Group to consider the strategic and business case for merger and report back to the Governing Bodies. It can often be helpful at this point to put Confidentiality Agreements in place both between the schools and for senior staff members involved in the process. There is a delicate balance to be achieved between including sufficient staff to ensure that you have the right information to make your decisions and ensuring that the discussions do not leak. You should also prepare for the worst and ensure that the Schools have an agreed statement for staff, parents and press should the merger leak (see Communications below).

If a School has more than one potential suitor, it can also be sensible to enter into an exclusivity agreement, to ensure that you are not wasting time and resources only to find that another School has made a better offer.

This is also a good point at which to examine whether:

- the objects of the two schools are compatible - will require amendments either as to sex, age of pupils or religious precepts; and
- the Schools have a power to merge.

The deal headlines

Once some preliminary information has been shared, it is often the case that the Schools will enter into Heads of Terms. This helps to clarify the parties' expectations at an early stage in the process – will the school change its name, location, uniform, fee structure? Who will be the Head and senior team? Will there be redundancies?

Discharging your Duties

Having agreed principal terms, the Parties need to undertake a proportionate process of due diligence – both financial, educational and legal. Depending upon the experience and resource of the management team, this process can sometimes be completed internally or using

professional advisers. In the case of charitable independent schools, it is highly unusual for there to be any form of warranty protection. Which makes this part of the process arguably more important than in commercial transactions.

You should watch out for:

- pension liabilities for support staff particularly where you participate in an underfunded defined benefit scheme;
- special trusts, permanent endowment and functional property – which can also create additional hurdles..

Structural Design

By this stage it will usually have become clear what the most appropriate form of legal structure should be, whether:

- School A will transfer its assets and liabilities and business to school B;
- whether School B will assume control of School A, by say, becoming sole member and/or assuming control of the Governing Body;
- whether a new entity will be imposed over the top of both entities to create a group-like structure; or
- School A and School B merging into a newly created School C.

There are pros and cons to each.

Communication

Communication is key. From the initial discussions you need to agree how and at what stage you will communicate with staff (if necessary following TUPE requirements), parents, pupils, alumni, local authorities, OFSTED, DfE etc. In an ideal world the news will not leak and this will be within your control, but you should be prepared for all eventualities. Depending on the circumstances of the merger, the School can find itself faced with hostile staff and parents and time should be taken to ensure that the Head and others are well prepared with facts, figures and supporting arguments for the case for merger and information about the school's future, so that policy is not made on the hoof in the first public meetings. Preparing scripts and written Q&As can help.

Documenting the Merger

The lawyers will then be asked to prepare the Transfer Agreement, documenting the merger – dealing with staff, property, intellectual properties, trading subsidiaries etc. These will need to be considered and approved by each Governing Body.

In an ideal world it would be at this point when the deal is signed, that it would be announced and your communication plan would be implemented - you may not be given that luxury.

Reflections

Those who have been through a merger always note that they failed to realise the amount of management time and resource that a merger will absorb to the detriment of their day jobs. Acknowledging this at an early stage and bringing in additional resource can ease the burden. They also usually find that they have underestimated the additional costs – redundancies, professional advice, additional transport costs or uniform subsidies. There may also be a transitional period where cost savings cannot be achieved until the curriculums can be merged. It may also not be possible to bring everyone with you, and some find they lose Governors and staff along the way. However, if the case for merger was strong then the benefits delivered for both pupils and parents will have made the process worthwhile – creating a stronger school for the future.

If you would like to talk to us about the issues raised by this note, please contact:

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