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Charity Mergers Seminar

20 October 2009

Welcome

- current recession - increasing need for mergers and collaboration
- Grant Thornton's reaction
- recent success story - breaking new ground

Not for Profit trumps capitalism ...

- Housing 21 acquisition of Claimar Care Group plc
- Full Takeover Code offer
- "Auction process" to become preferred bidder
- Full use of advisers to ensure "success"

... while retaining its ideals

- Strategic objective to expand care alongside housing
- Achievement of five year plan in one step
- Transaction will be value enhancing
 - quality of care
 - scale gives ability to invest and influence
 - financial returns exceed cost
- Effective governance within regulatory framework
 - board fully supportive
 - Regulator was challenging but satisfied
 - PR managed effectively

Today's agenda

- Richard Black, Head of Mergers, Charity Commission
- Matt Dunham, Recovery Specialist, Grant Thornton
- Nigel Mattinson, Transaction Services, Grant Thornton
- Sandra Malone, Marketing & Branding Specialist, Grant Thornton

Charity Commission

Collaborative Working & Mergers

Richard Black



The Commission



- The Commission is established by law as the regulator and registrar of charities in England and Wales
- Our aim is to provide the best possible regulation of these charities in order to increase charities' efficiency and effectiveness and public confidence and trust in them

Commission Policy – Collaboration and Mergers



- In summary;
- Encourage trustees to do more and better for their beneficiaries
- It is not part of our agenda to push particular charities towards merger
- Trustee decision whether or not to merge or collaborate

Charities Act 2006



- Relevant charity mergers defined:
 1. One charity passing its assets to another charity and then dissolving
 2. Two or more charities passing their assets to a new charity and then dissolving
- Register of Mergers

Charity Services – Specialist Casework Division (SCW)



- Charity Services Division handles specialist and merger/collaborative working cases
- SCW division – 53 staff based in Liverpool and Taunton
- SCW division – 40% increase in general workload in past year

Mergers Unit Remit



- Origins of the Mergers Unit;
 - Cabinet Office Strategy Unit report (Sept 2002)
- Mergers Unit – part of SCW
- Handles High Risk mergers
- Identifies themes/issues relating to mergers (e.g. due diligence, process/planning/rushing, communications, pensions, evaluating success)
- Working with NCVO Collaborative Working Unit by providing advice on technical issues and publications

Mergers Unit Remit



- Casework
 - High risk
 - High profile
 - High income/assets
- Strong links with Commission Large Charities Division

High Profile Mergers



- CR UK
- CLIC/Sargent
- NSPCC/Childline
- Age Concern/Help the Aged
- Rainer/Crime Concern Catch22
- Groundwork UK/Groundwork local Trusts
- Police Dependants Trust/National Police Fund
- Victim Support

What's the difference between Merger and Collaborative Working?



- A merger involves the disappearance of one or more charities
- For collaborations the charities remain but work together under an agreement, e.g. a contract or memorandum of understanding. The type of agreement charities opt for will depend on the scale of the collaboration – could be a contract for large scale collaborations or less formal agreement for smaller scale

What's the difference between Merger and Collaborative Working?



- For merger charities need to have compatible objects
- For collaboration a charity needs to be satisfied that collaborating furthers its objects, that the resources devoted are reasonable in relation to the extent to which the objects are furthered, and that any benefit to others is incidental

Mergers Unit Casework



- Holistic approach
- Beneficiaries/service delivery
- Look at object compatibility
- Legal possibilities
- If merger is not legally possible is collaborative working possible?

Charity Commission Mergers Unit – where are we now?



- Climate for merger and collaborative working in the sector
- Economic downturn could result in more mergers/collaborations
- Increase in more complex collaborative working arrangements between differing organisations

Further work of the unit



- Mentoring for Commission staff
- Outreach work in the sector e.g. Modernisation Fund
- Research – statistics and trends
- Case studies – develop good practice – Volunteering England evaluation

Further work of the unit



- Local Authority Project – raise awareness of Charity Law with local authorities
- Develop relationships with other organisations – Local Government Association, Bassac, CWU

Aspects of Good Practice – our advice



- Highlight the main barrier to successful merger – personality/communications issues
- Emphasis on need for good planning, communication and project management methodology
- Point out need for due diligence

Aspects of Good Practice – our advice



- Charities need to contact us as early as possible in the process where constitutional advice or legal authority is required

Office of the Third Sector – Modernisation Fund Roadshows



- £16.5 million – to support viable third sector organisations to access specialist services to restructure and become more efficient
- To fund specialist legal, financial and employment advice and guidance that organisations require to merge or collaborate

Issues raised by charities



- We are a CIC and want to become a charity for grant funding purposes
- We are a charity and want to work with or form a CIC, how should this be structured?
- What is the difference between a CIC, Social Enterprise Company and a trading company?
– confusion as to where charitable status fits
- Difficulties due to personality and communication problems

Issues raised by charities



- Don't know where to start
- Don't have the staff resource to look at the possibilities
- The subject is daunting and complex
- Lack of awareness of Governing Documents and the role of trustees

Issues raised by charities



- Small charities with incomes below £150K do not qualify for the Modernisation Fund, but provide vital services – where do we get funding to survive? (Funding Central now available through NCVO.)
- Sector needs a brokerage scheme to find potential partners
- Lack of negotiating skills with commissioning – feel pressurised by funders to merge or collaborate

Trends and Issues



- **Statistics** – reasons for merger 58% Service Delivery reasons, 37% Solvency and 5% Combination of the two
- **Research report – mergers and collaborations May 2009**
 - 447 telephone interviews with charities that made collaborative working and merger enquiries with the Commission over the past 3 years
 - only 9% of charities have considered collaboration
 - over 90% said their merger was successful

Mergers & Collaborative Working Toolkits



- Toolkits for charities – intended to encourage informed decision making
- Covers constitutional aspects, due diligence themes and issues
- Available on website from September www.charitycommission.gov.uk



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COFFEE BREAK



Mergers and collaborative working

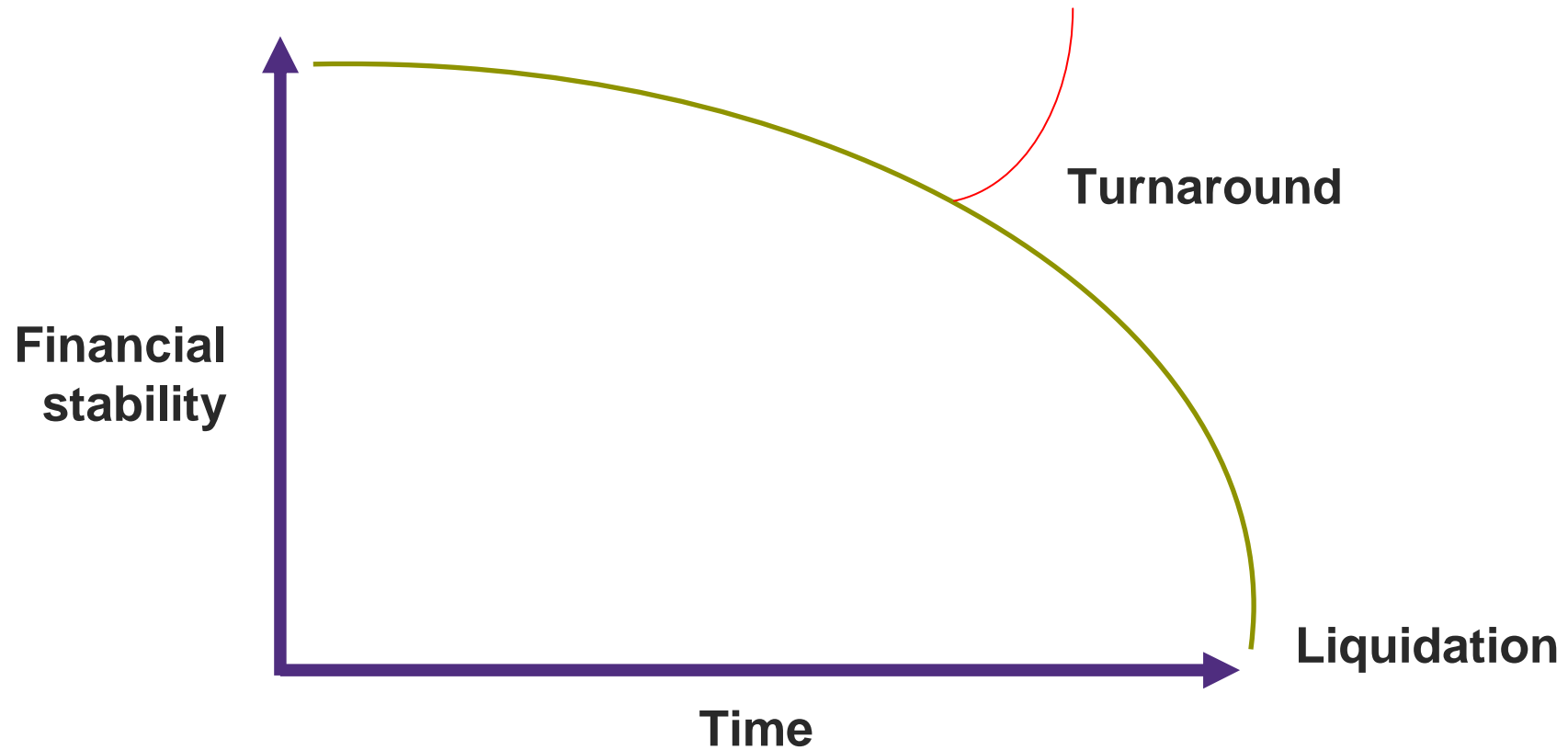
Matthew Dunham - Partner
Nigel Mattinson - Associate Director

October 2009

Matt Dunham

Why you need to consider your
options

Demise curve



The recession has pushed the demise curve to the left

What is insolvency?

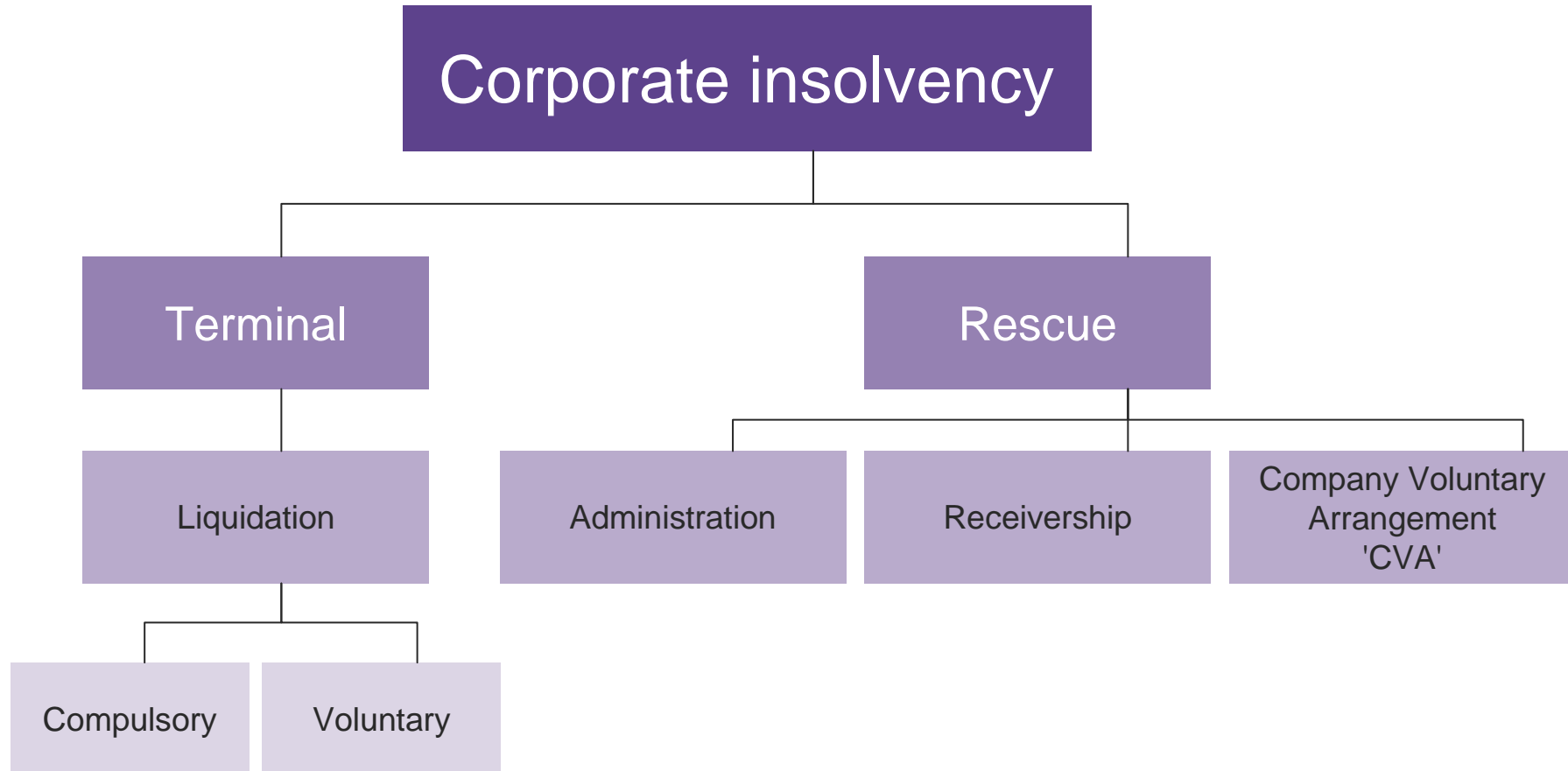
The **cash flow** test

- 'Cannot pay debts as and when they fall due'
 - statutory demand
 - petition

The **balance sheet** test

- Liabilities exceed assets

Corporate insolvency chart



Issues to consider

- Not a commercial organisation
 - aims are generally not commercial

But

- Still bound by corporate and insolvency law

Issues to consider

Trustees'/directors' duties

- As any commercial business
 - wrongful trading
 - potential personal liability of directors
 - grace and favour trustees
 - may be less commercially focused

Administrator's objectives

- Survival of the company
- A better realisation than through a liquidation
- Realisation of assets for a secured lender
- **Not** protection of the aims of the charity

Solutions

- Take early advice
- Formal advice for the board
- ~~Early action~~ more options

Nigel Mattinson

Why do it and what it's going to be like

Reasons for merging / collaborating

Expansion

Improve service

Realise cost savings

Safeguard the future

Merger or collaboration

Whatever the reason the issues will be similar

Merger

Collaboration

Common issues

- Define the parameters
- Find a partner
- Get comfortable with the other party - can they deliver
- Signing the deal
- Realising the benefits

The merger / collaboration process

Define the parameters

- Set your objectives - what do you want from the partnership
- What is achieving your objectives worth to you
- What are you prepared to pay? Financial costs but also cultural sacrifices

Nervous - Is this the right path for you?

Find a partner

- The ideal partner may be obvious but you may need to
- do some preliminary work to prepare a short list of say 8-10 partners
- do some further more detailed work to identify your preferred partner

Still nervous but you are relaxing as you begin to explore the options

Conduct due diligence

- Identify any issues ... and ways to resolve them
- Gives you comfort that you are getting what you think you are getting

Apprehensive but beginning to get comfortable that this could be right for you

The merger / collaboration process (continued)

Obtaining buy-in from stakeholders

- Can be the hardest part of the process
- Requires diplomacy and tact
- You are nearly there

Still apprehensive but you are convinced that this is the right thing to be doing

Signing the deal

- This can be a formality ... but it is important to remember that things can still go wrong and it isn't final until the ink is on the page

Relief?

Realise the benefits - 100 day plan

- This is where the hard work begins
- critical to realising your objectives
- Needs to be developed and be in place before signing the deal - afterwards is already too late
- Needs to be detailed and cover operational issues

Its hard work but you are going to make it work

Merging / collaborating - some thoughts

- It will probably be stressful - even if you've been through the process before
- The hardest part will be finding the cultural fit
- It probably won't be easy but it will probably be worth it

Any questions?

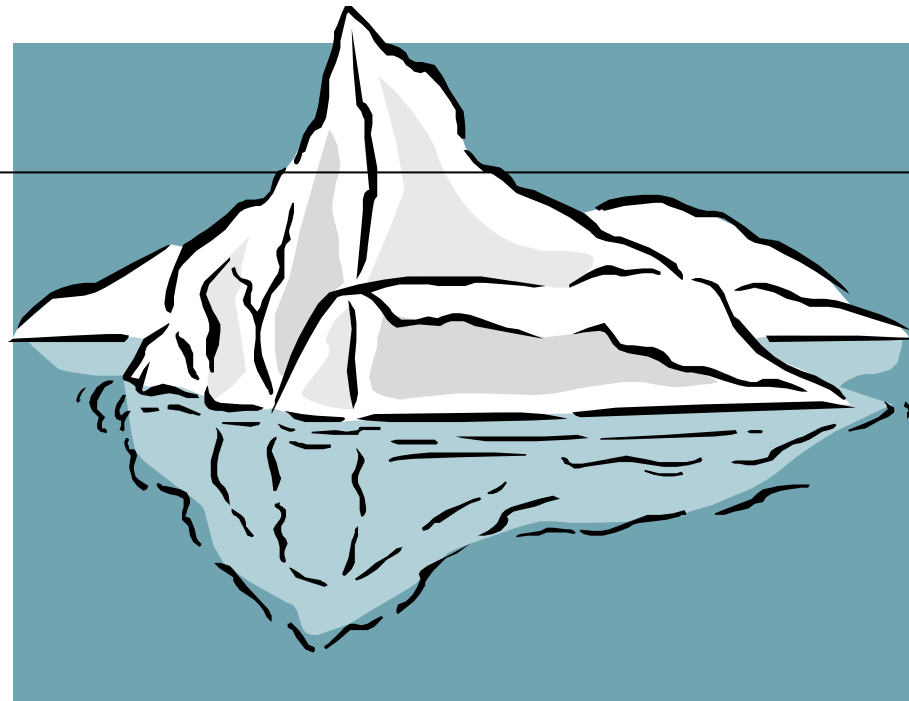


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Sandy Malone
Marketing & Branding Specialist

A Merger is like an iceberg.....

Financial goals and organisational issues are often top priority



But watch out for what's below the surface! :

- Cultural clashes
- The new 'brand' promise
- Segmenting the 'new market
- Developing the new 'value proposition'
- Communicating to customers
- Internal communication issues
- The new 'service' strategy

A successful merger requires a comprehensive review of those factors which will determine your long-term success



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QUESTIONS