Transactions guidance – for trusts undertaking transactions, including mergers and acquisitions

November 2017
We support providers to give patients safe, high quality, compassionate care within local health systems that are financially sustainable.
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1. Introduction

This framework document provides guidance on organisational transactions (primarily mergers and acquisitions) undertaken by NHS trusts and foundation trusts (‘trusts’), and on non-organisational transactions (primarily significant capital investments, joint ventures and private finance initiatives – PFIs). It consolidates and supersedes previous transactions guidance issued by Monitor and the Trust Development Authority (TDA). In particular, it consolidates and replaces:

- Supporting NHS providers: guidance on transactions for NHS foundation trusts (updated March 2015)
- the transaction-related elements of Delivering for patients: the 2015/16 Accountability Framework for NHS trust boards (June 2015)
- Appendix C of Monitor’s Risk Assessment Framework.

The guidance also aligns the transaction review process to the integrated support and assurance process (ISAP) by setting out a standardised transaction framework NHS Improvement can use to risk assess transactions in a new care model context.

1.1. What has changed?

- **Updated risk-based assurance approach.** From 1 October 2016 the Single Oversight Framework for NHS providers (SOF) replaced the Risk Assessment Framework (RAF) and TDA Accountability Framework. In light of this and lessons learned from recent transactions, we have updated the risk factors we will consider when determining the depth of regulatory assurance each transaction requires. We have also extended our assurance process to NHS trust-only transactions under the SOF principle of treating NHS trusts and foundation trusts similarly wherever appropriate.

- **A more streamlined, front-loaded process with greater focus on early engagement with NHS Improvement.** We have combined the previous strategic outline case (SOC) and outline business case (OBC) into one document called the strategic case with a single review stage (stage 1). This new approach requires trusts to provide more detailed information at the beginning of the transaction process (previously required at the OBC stage). This means potential issues are identified earlier in the process and
trusts have more time to mitigate them before progressing to the business case stage (stage 2), previously the full business case (FBC) stage. It also means trusts can identify earlier if they need to change the form of the transaction or, before committing large-scale resources, can decide not to pursue the transaction. The final stage – the approvals stage (stage 3) – is unchanged. The new approach also reduces the total cost and time taken to complete a transaction.

- **Articulation of ‘red flag’ issues.** We have listed ‘red flags’ that if identified at the strategic case stage will require trusts to do further work on their strategic case and/or to provide mitigations for the identified risks. In some circumstances, for example where unmitigated risks are significant, we may not allow a transaction in its current form to proceed beyond the strategic case stage.

- **Sharing key learning points from previous mergers and acquisitions (M&A).** We have consolidated lessons learned from previous mergers and acquisitions and the key learning points from the CASS Business School review of recent transactions.

- **Guidance on capital funding.** To reflect the ongoing constraints on capital funding, we outline how trusts should approach funding transactions.

- **Overview of NHS Improvement’s M&A support offer.** We clarify the support we can offer to trusts preparing for an M&A, including additional legal guidance and information on management support arrangements.

Figure 1 summarises our revised and streamlined three-stage process and Figure 2 shows an indicative timeline for the revised process. Section 3 gives detailed guidance on each of the three stages and their timing.
Figure 1: Overview of the three transaction review stages

<table>
<thead>
<tr>
<th>Strategic case</th>
<th>Business case</th>
<th>Approvals</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Trust</strong></td>
<td><strong>Business case</strong></td>
<td><strong>Approvals</strong></td>
</tr>
<tr>
<td>• Evaluations of strategic challenges and options</td>
<td>• People, resources and progress in place</td>
<td>• CMA clearance (if required)</td>
</tr>
<tr>
<td>• Transactions fit with the overall strategy</td>
<td>• Determine optimal transaction structure and financing</td>
<td>• Board decision to proceed, renegotiate or cancel</td>
</tr>
<tr>
<td>• Preliminary analysis of key financial assumptions (transaction costs, synergies, funding, service developments and drivers of the deficit)</td>
<td>• Detailed review supported by full due diligence; finalisation of full business case and detailed integration plan</td>
<td>• Governors’ vote (if transaction involves a foundation trust)</td>
</tr>
<tr>
<td>• Outline transaction governance and programme management plan</td>
<td>• Prepare submission to the CMA (where required)</td>
<td>• Secretary of State application (where an NHS trust is involved)</td>
</tr>
<tr>
<td>• Outline post-transaction plans</td>
<td></td>
<td>• For ‘statutory’ transactions: application to NHS Improvement (Monitor) including Secretary of State support if needed</td>
</tr>
<tr>
<td>• Legal position and NHS Improvement’s regulatory requirements</td>
<td></td>
<td>• Transaction closure</td>
</tr>
<tr>
<td>• Detailed analysis of any potential competition issues to determine whether or not to notify the CMA</td>
<td></td>
<td>• Implementation/integration workstreams up and running</td>
</tr>
<tr>
<td>• Draft submission on relevant customer benefits (if required)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>NHS Improvement</strong></td>
<td><strong>NHS Improvement</strong></td>
<td><strong>Advisors</strong></td>
</tr>
<tr>
<td>• Review and support trust’s assessment of any competition issues</td>
<td>• Support trusts in preparing competition submission to the CMA and assess planned benefits for patients (if required)</td>
<td>• Strategy advisors (if optional)</td>
</tr>
<tr>
<td>• Feedback on the trust’s draft submissions on relevant customer benefits</td>
<td>• Detailed review covering transaction execution, quality and finance 10–12 weeks from receipt of submissions)</td>
<td>• Legal advisors (with competition expertise if required)</td>
</tr>
<tr>
<td>• Confirmation of risk classification; scope of assurance review and level of support to be provided at the business case stage</td>
<td>• Board-to-board meeting (after about 7–8 weeks)</td>
<td>• Corporate finance advisors</td>
</tr>
<tr>
<td>• Review of the strategic rationale</td>
<td>• Transaction risk rating</td>
<td>• Competition advisors (support for competition case, if required)</td>
</tr>
<tr>
<td>• Evaluation of the strategic case against a series of tests</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
1.2. Who should use this guidance?

This guidance should be used by all NHS trusts and foundation trusts considering a transaction. At the time of publication (November 2017), a consultation is ongoing with regard to organisations controlled by NHS providers (referred to as NHS-controlled providers). If the proposals are implemented as outlined, this guide will also apply to NHS-controlled providers. This guidance does not apply to independent sector providers of NHS services.

It is relevant to all parties to a transaction and details both NHS Improvement’s regulatory assurance process as well as the support we can give. Where specific elements of the guidance are relevant to only a subset of the parties involved (for example, the trust that will be acquired – ‘the target’ organisation), we explicitly highlight this. Our use of the term ‘transaction’ covers both organisational and non-organisational transactions and investments. Where we refer to requirements for ‘acquiring’ trusts, in the case of a merger these apply to both parties.

**Transition arrangements**

If your trust has started a transaction process under the previous guidance from Monitor and has planned an OBC review with us, we will continue to work with you according to this plan.

**Monitor and TDA statutory powers**

From 1 April 2016, NHS Improvement is the operational name for the organisation that brings together: Monitor, TDA, Patient Safety (including National Reporting and Learning System), Advancing Change Team and Intensive Support Teams.

NHS Improvement exercises the statutory powers of both Monitor and TDA in supporting, reviewing and approving transactions. The bodies have different statutory roles in transactions, and NHS Improvement recognises that we may exercise potentially conflicting functions in a single transaction; for example, when acting as a vendor for an NHS trust being acquired by a foundation trust. Where this is the case, separate teams will carry out the conflicting functions. We have identified throughout this guidance where functions are specific to Monitor or to

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1 The consultation proposes to introduce a set of standard licence conditions for these entities which mirror as far as possible the more specific licence conditions for foundation trusts. This would allow us to oversee NHS-controlled providers alongside NHS providers under the SOF. The impact analysis for this consultation indicates that only a small number of providers would be affected.
TDA; however, this guidance is intended to provide a single framework for all trusts, regardless of their legal status.

**Timeline for review**

Figure 2 below gives an indicative timeline for the development, review and completion of a business case for an acquisition under section 56A of the NHS Act 2006, which is the most common organisational transaction. This timeline should be taken as an **indicative** guide to allow trusts to plan appropriately, but trusts should bear in mind that timings may need to change to reflect any risks identified during the strategic case and business case reviews.

If your trust is considering another legal mechanism for a transaction, the timings may be slightly different, depending on the process involved.

Trusts should discuss their proposals with their NHS Improvement regional team to understand if there is anything more they may need to consider during planning. Further to this, we may need to consider the urgency of the transaction when considering whether we have the resource in our organisation to meet the proposed timeline.
Figure 2: Indicative timeline for a section 56A acquisition

Key: final business case (FBC); value for money (VfM); heads of terms (HoT).
1.3. Types of transactions covered in this guidance

Any transaction that matches the description of one or more of the categories below is a **relevant transaction** for the purposes of this guidance.

- **A transaction that should be reported to us under the thresholds set out in Section 2.2.** This includes most mergers and acquisitions as well as larger capital investment projects and property transactions, PFI-funded projects and potentially some major service contracts (including new care models, per ISAP). Potential transactions should be reported to us if the ratio of the gross assets, income or consideration attributable to the transaction exceeds 10%\(^2\) of the trust's gross assets, income or total capital respectively. We classify these transactions as ‘material’ or ‘significant’ according to the criteria set out in Section 2.2.

- **A transaction that could be reviewed by the Competition and Markets Authority (under the Enterprise Act 2002).** This includes transactions resulting in two or more enterprises ceasing to be distinct (such as mergers, acquisitions, joint ventures, transfers of services, asset swaps and management agreements).

- **A statutory transaction.** NHS Improvement has a statutory role to grant these transactions if the legal requirements are met. This guidance covers the following types of transactions (all references to legislation relate to the National Health Service Act 2006 (NHS Act 2006) unless otherwise stated):
  - merger – section 56
  - acquisition – section 56A
  - three-way merger or acquisition
  - dissolution of an NHS trust and transfer of assets – schedule 4
  - dissolution of a foundation trust – section 57A
  - commercial transfer – ordinary legal powers.

Appendix 1 provides information on the legal aspects of the above transaction types, as well as the roles and responsibilities of executive directors, non-executive directors (NEDs) and governors when taking transaction-related decisions.

Trust special administration is **not** covered in this guide.

\(^2\) 5% where the transaction involves assets outside the UK or outside the healthcare sector.
2. Regulatory framework governing transactions

Our regulatory framework is designed to ensure that transactions work well for patients. It has two main components: competition review of mergers by the Competition and Markets Authority (CMA) and risk assessment of transactions by NHS Improvement. In practice, these two components are closely aligned and interrelated with similar objectives and overlapping key lines of enquiry. The ability to demonstrate why a transaction will improve care for patients will help trusts navigate both any CMA merger review and our risk assessment review process.

Trusts contemplating a relevant transaction should discuss their plans with their NHS Improvement regional team at an early stage, ideally as soon as they are confident they will pursue the transaction. Further information on how and when to engage with us can be found in Section 3.

2.1. The CMA’s competition review of transactions

Trusts contemplating a transaction will need to consider whether it raises competition issues and could be subject to review by the CMA. The CMA has primary responsibility for reviewing the competition implications of mergers in all sectors of the economy in the UK, including health.

Competition is one of many factors that may affect the quality and value for money of NHS services. The CMA considers whether merging trusts offer alternative choices to patients or commissioners, and whether the merger may reduce these choices and undermine providers’ incentives to improve quality and value for money. This can in turn adversely affect the services offered to patients or commissioners, such as by reducing quality, efficiency or innovation of services, or reducing access to services. If the CMA finds that a transaction has or may be expected to result in a ‘significant lessening of competition’, it will consider whether or not the adverse effects of this for patients or commissioners are outweighed by any benefits that would arise from the merger. The CMA places significant weight

3 Any competition review for transactions involving NHS trusts only is undertaken by NHS Improvement.
on NHS Improvement's views about whether there are relevant benefits given our role and expertise.

The CMA does not review all transactions (the box below identifies which transactions can be reviewed by the CMA). A proposed transaction only requires competition review if it may raise competition concerns – for example, where merging providers are located close to each other and provide similar services. If it does not – perhaps because the merging trusts do not provide the same services and have no plans to do so (e.g., one provides mental health services and the other standard acute services) – and is unlikely to affect providers’ incentives to improve quality, it is unlikely to be reviewed.

### Which transactions can the CMA review?

The CMA only reviews transactions that involve one or more foundation trusts. It does not review transactions involving NHS trusts only.

Transactions that may be subject to CMA review include mergers, acquisitions, joint ventures, transfers of services or management contracts. Some new care models may also fall within its jurisdiction.

For a transaction to require review by the CMA, it must change the level of control over all or part of an organisation.

An organisation may comprise any number of components, most commonly the assets and records needed to carry on the business, and the employees working in the business, together with the benefit of existing contracts and/or goodwill.

**CMA thresholds**

To be reviewable a transaction must meet certain thresholds. The two key thresholds are: a UK turnover of the acquired organisation exceeding £70 million or the merged organisation supplying or acquiring at least 25% of particular goods or services in a substantial part of the UK and the merger increasing that share.
NHS Improvement can help trusts in a number of ways regarding the possible competition implications of a proposed transaction. These are:

- helping trusts to understand whether, and to what extent, they represent alternatives to each other for patients and commissioners, and whether patients and commissioners will still have other alternatives after the transaction\(^4\)
- liaising with the CMA to help trusts understand whether their proposed transaction is likely be reviewed, and advising trusts on whether and when to notify the CMA of their transaction\(^5\)
- helping trusts develop a strategy for engaging with the CMA and presenting their proposal to the CMA
- supporting trusts to develop their proposals for delivering benefits to patients through the transaction, in particular where compelling evidence of patient benefits is likely to be needed to achieve CMA approval
- supporting trusts in procuring competition advisors
- if a review is needed, supporting trusts to navigate a formal merger review by the CMA.

As a general rule, trusts should engage with us as early as possible in the strategic case stage. This allows us to help them identify any competition issues at an early stage and work out a strategy for moving forward. As far as possible, the competition review process should align with NHS Improvement’s assurance process, as the strategy, business case and patient benefits of a transaction are relevant to both. Further information on the different stages of the NHS Improvement assurance review process is given in Section 3.

### CMA review process

If trusts decide to notify the CMA of their proposed transaction, the ensuing CMA process will be phased. First, the trusts (and their advisors) should engage with the CMA in a preliminary stage known as pre-notification discussions. These help identify the information the trusts will need to provide the CMA and NHS

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\(^4\) The typical starting point for this is analysis of GP referral data.

\(^5\) Trusts are not required to notify the CMA of a proposed transaction; it is for a trust to decide whether to do so. However, the CMA can initiate an own-initiative review (eg following a well-reasoned complaint) up to four months following completion of the transaction. The CMA has four months from the transaction being made public or being completed (whichever is the later) to decide whether to do this.
Improvement with for the CMA’s merger review, and help ensure the CMA’s review proceeds efficiently once it starts. Generally, pre-notification discussions take about two to eight weeks, but this can vary depending on the complexity of the issues.

After pre-notification discussions there are two possible formal phases of the CMA’s merger review.

**CMA Phase 1 review**

A CMA Phase 1 review follows pre-notification discussions and lasts up to 40 working days. If during this review the CMA finds a merger is likely to raise competition concerns, it will consider whether the adverse effects are outweighed by benefits to patients or commissioners arising from the merger. The CMA will clear the merger if it is satisfied such benefits do outweigh the adverse effects. NHS Improvement has a statutory duty to advise the CMA on the relevant customer benefits from mergers involving foundation trusts. If the CMA finds the benefits of the merger do not outweigh its adverse effects, it has a duty to refer the merger for an in-depth Phase 2 review.

A CMA Phase 1 review can be timed to start immediately after NHS Improvement has given its support to an acquiring trust developing a business case for its proposed transaction, following a review of its strategic case.

**CMA Phase 2 review**

If a merger is not cleared at Phase 1 and the CMA’s review progresses to Phase 2, the CMA conducts a detailed assessment of the effects of the merger on competition. If the CMA finds that a merger is likely to raise competition concerns, it must decide what action is appropriate. It has the power to clear the merger, prohibit the merger or allow it to proceed subject to conditions. The CMA may decide that it is disproportionate to prohibit a merger that raises competition

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6 The CMA’s timeline for reviewing the transaction will only start when it informs the trusts that their merger notice form is complete.
7 This was the basis on which the CMA cleared the anticipated merger between University Hospitals Birmingham NHS Foundation Trust and Heart of England NHS Foundation Trust in August 2017 at Phase 1. See: [www.gov.uk/cma-cases/university-hospitals-birmingham-heart-of-england-merger-inquiry](http://www.gov.uk/cma-cases/university-hospitals-birmingham-heart-of-england-merger-inquiry)
8 The term ‘relevant customer benefit’ is defined in section 30 of the Enterprise Act 2002. In relation to the healthcare sector, ‘customer’ means a current or future user of healthcare services (often but not always referred to as a ‘patient’) or a commissioner. We generally use the term ‘patient benefits’ in this guidance for ease of reference.
concerns if it finds that the adverse effects are outweighed by substantial patient benefits.⁹

A Phase 2 review is generally limited to 24 weeks. It is likely to extend the timeline for NHS Improvement’s business case and approvals stages, as the parties would not be able to complete their transaction until the CMA had completed its Phase 2 review and, subject to this, cleared the merger.

In assessing the risk of a transaction to determine the level of assurance required (see Section 3), we will consider how likely it is that the CMA will review the transaction, the extent of any possible competition concerns and whether compelling evidence of relevant patient benefits is likely to be required to achieve CMA clearance.

Further information and guidance on when and how the CMA reviews a proposed transaction and how NHS Improvement assesses the benefits of mergers can be found in the following documents:

- *Competition review of NHS mergers: A short guide for managers of NHS providers* (July 2014)¹⁰
- *Supporting NHS providers: guidance on merger benefits* (March 2013).

### 2.2. NHS Improvement’s risk assessment of transactions

We define a successful transaction as one that enables a material improvement in performance. This might include: releasing economies of scale; improving patient care; rationalising or streamlining the estate or the pattern of services; sharing overhead costs; and/or generating a level of income that supports a higher investment than either organisation can achieve alone. To be successful, transactions must be based on robust strategic thinking and sound analysis of clinical and patient benefits. They need to be meticulously researched and planned.

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⁹ This was the basis on which the CMA cleared the anticipated merger between Central Manchester University Hospitals NHS Foundation Trust and University Hospital of South Manchester NHS Foundation Trust in August 2017 at Phase 2. See: [www.gov.uk/cma-cases/central-manchester-university-hospitals-university-hospital-of-south-manchester-merger-inquiry](http://www.gov.uk/cma-cases/central-manchester-university-hospitals-university-hospital-of-south-manchester-merger-inquiry)

Transactions are seldom the solution to inherent organisational weaknesses. Before considering a transaction, organisations must address any problems they face in the short term, whether by improving models of care, improving efficiency and/or operational performance, or tackling weak governance or any other issues.

In addition to our role in the competition review of transactions (described above in Section 2.1), NHS Improvement has:

- Responsibility for reviewing transactions we consider could significantly alter the risk profile of a trust. This includes provider-to-provider contracts as well as novel contracts – for example, those linked to new models of care, per ISAP. This falls under our broader responsibilities to ensure foundation trusts comply with the conditions of their provider licence (and the equivalent of these conditions for NHS trusts).
- A role in granting statutory transactions (as defined in Appendix 1).

Our reporting and review requirements

We assess any transaction that meets the reporting and review thresholds. If a potential transaction meets any of the criteria listed in Table 1 below, the trust should report it to NHS Improvement.

Table 1: NHS Improvement reporting requirements

<table>
<thead>
<tr>
<th>Ratio</th>
<th>Description</th>
<th>Reporting requirements</th>
<th>Non-healthcare/international</th>
<th>UK healthcare</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assets</td>
<td>The gross assets* subject to the transaction* divided by the gross assets of the trust</td>
<td></td>
<td>&gt;5%</td>
<td>&gt;10%</td>
</tr>
<tr>
<td>Income</td>
<td>The income attributable to the assets or contract associated with the transaction* divided by the income of the trust</td>
<td></td>
<td>&gt;5%</td>
<td>&gt;10%</td>
</tr>
</tbody>
</table>
Consideration to total trust capital

| Consideration to total trust capital | The gross capital** or consideration associated with the transaction* divided by the total capital of the trust following completion, or the effects on the total capital*** of the trust resulting from a transaction* | >5% | >10% |

* Gross assets are the total of fixed assets and current assets.
** Gross capital equals the market value of the target’s shares and debt securities, plus the excess of current liabilities over current assets.
*** Total capital of the foundation trust equals taxpayers’ equity.

Capital investments may be made over a number of years, with revenue attributable to the investment potentially only achieved in future years. To calculate the asset ratio, estimated capital spend is compared with audited asset values, and to calculate the income ratio the full-year impact of projected revenue from the investment is compared with the projected trust revenue in that year.

Where a trust chooses to end its membership of NHS Protect’s various schemes (previously the NHS Litigation Authority), including the Clinical Negligence Scheme for Trusts (CNST), and enters into alternative indemnity arrangements that affect the capital (taxpayers’ equity) on the trust’s balance sheet, this may trigger a transaction review according to the thresholds set out in Table 1.

For any other transaction types (including mergers and acquisitions), the data we use to assess whether the transaction is reportable will be considered on a case-by-case basis. We also do this where there has been a material or significant transaction (as defined below) since the date of the last audited accounts (that is, those accounts do not include that transaction). Trusts should seek our guidance if there is any uncertainty in either of these circumstances.

In the case of an acquisition where there has been a material change in the financial position of either the acquiring trust or the business being acquired since the date of their last accounts, and the ratios at that time are not considered representative of the likely contribution of the acquired business to the trust, we may, following discussions with the trust, choose to recalculate the ratios on a pro forma basis using current or future year data.
In any case we may, following discussions with the trust, choose to recalculate the ratios using data that we reasonably consider to be a more appropriate measure of the relative size of the transaction.

If a potential transaction meets these reporting criteria, the transaction will be considered ‘reportable’ and the trust(s) should contact its NHS Improvement regional team as soon as it is confident the transaction is likely to proceed and before the strategic case is completed to discuss:

- the level of inherent risk in the transaction; this guides the level of scrutiny we will give it if it does need to be reported to us
- the likely timing of any detailed review
- the scope of any detailed review
- the level of support provided by NHS Improvement.

Even where a proposed transaction does not trigger the reporting requirements set out above, trust boards are encouraged to take account of our best practice advice (see Appendix 3) when evaluating the processes they should follow to ensure reputational and financial risks are fully understood and governance obligations are met.

Further guidance on how the reporting thresholds are calculated is given in Appendix 2.

**Approach to transaction review**

The degree to which we scrutinise any proposed transaction depends on our perceived level of its inherent risk. This level determines whether a transaction is classified as ‘small’, ‘material’ or ‘significant’.

Transactions that do not meet the reporting requirements (see Table 1) are classified as ‘small’ transactions. But if a small transaction is a statutory transaction, the trust(s) must make a formal application to NHS Improvement and demonstrate that it has taken the necessary preparatory steps, as set out in Appendix 1. We would not normally expect to be notified or otherwise involved in any other types of small transaction.

All reportable transactions are classified as ‘material’ or ‘significant’ (as defined below).
Trusts undertaking transactions must satisfy our review requirements before entering into any legally binding commitments. These are:

- **Material transactions**: we require board certification (as described in Appendix 8) to be submitted to and agreed with us.

- **Significant transactions**: our detailed review will result in a transaction risk rating. Foundation trusts should only proceed with transactions that are risk rated green or amber (the processes and basis of which are set out in Sections 3, 4 and 5).

- **Statutory transactions**: there are specific requirements as outlined in Appendix 1.

**Threshold for detailed review**

Once a transaction has been reported to us, we will look in detail at the risks the transaction may carry, to determine our regulatory approach. Key to understanding the inherent risk of the transaction will be:

- the relative size of the transaction compared to the acquiring trust
- which SOF segment the acquiring trust is in.

Where a merger is being proposed, we will consider the relative performance of both trusts involved when considering the inherent risk of the transaction. Their size and SOF segment will be considered along with other potential transaction risk factors including the:

- financial position of the trusts and funding requirements (see Section 7 for further detail on funding)
- leverage expected in the enlarged organisation following the transaction (where the transaction is a capital investment)
- existing level of financial and quality risk in the acquirer (or merging parties) (where relevant)
- level of existing financial and quality risk (including Care Quality Commission (CQC) rating) in the target (where relevant)
- degree of experience in the acquiring trust of the services provided by the target (where relevant) or of any change in service following the investment
- risks identified as part of our early engagement/strategic case review (where relevant); for instance, poor options appraisal, lack of strategic rationale or management capacity.

A non-exhaustive list of the risk factors that we consider alongside the relative SOF rating is given in Table 2 below, to provide trusts with an indication of what we may consider to be a major risk or other risk.

**Table 2: Transaction risk factors**

<table>
<thead>
<tr>
<th>Risk factor</th>
<th>Example of major risk</th>
<th>Example of other risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquirer’s use of resources rating</td>
<td>Finance score of 4</td>
<td>Finance score of 3</td>
</tr>
<tr>
<td>Acquirer’s quality</td>
<td>CQC rating of ‘requires improvement’</td>
<td>CQC well-led domain rating of ‘requires improvement’</td>
</tr>
<tr>
<td>Leverage</td>
<td>Capital servicing capacity of enlarged organisation is &lt;1.75</td>
<td>Capital servicing capacity of enlarged organisation is &lt;2.5</td>
</tr>
<tr>
<td>Acquirer’s experience of services provided by target</td>
<td>Transaction is novel, contentious and falls outside what can be considered business as usual in the normal course of business, and represents a significant change in the scope of the acquirer’s activity</td>
<td>A minor change in scope of activity for the acquirer</td>
</tr>
<tr>
<td>Target quality</td>
<td>CQC rating of ‘inadequate’</td>
<td>CQC rating of ‘requires improvement’</td>
</tr>
<tr>
<td>Target’s SOF rating</td>
<td>Segment 4</td>
<td>Segment 3</td>
</tr>
</tbody>
</table>

We determine the level of assurance required for each significant transaction on a case-by-case basis and may change our relative weighting of the risks in Table 2 if we consider this appropriate. We will take an initial view of the risk profile of the transaction before the strategic case stage. Following the strategic case stage and in advance of the business case stage, we will refresh our view to ensure our level of review reflects the most up-to-date information on the transaction risks. Trusts should keep us informed of any change to the risk profile of their transaction and we
may change our view of the appropriate transaction review classification based on this information.

Based on our assessment of the nature and scale of these risks, we will determine whether a detailed business case review is required and, if so, the scope of this review. **If a detailed review is required, the transaction will be classified as ‘significant’.** Examples of transactions requiring a detailed review are:

- a relative size of >40% in any of the tests in Table 1
- a relative size of between 25% and 40% in any of the tests in Table 1 and where we have identified an additional risk factor (see Table 2) that we consider relevant
- a relative size of between 10% and 25% in any of the tests in Table 1 and where we have identified one or more major risks or more than one other risk (see Table 2) that we consider relevant.

Transactions that trigger the reporting requirements set out in Table 1 but do not require a detailed review are classified as ‘material’ transactions.

Figure 3 shows our approach to classifying transactions, to help trusts understand likely outcomes.

**Material transactions – requirements**

Where we classify a transaction as material, we will, as part of our overall assessment of financial and governance risk, request evidence in the form of certification that the board has satisfied itself in a number of the key areas of risk set out in Appendix 8. For certain transactions we may require trusts to provide additional evidence to support their certification. The certification should be submitted to and agreed with us before the trust enters into any legally binding arrangements in relation to the transaction. In addition, within six months of completing the transaction, the trust board should make a revised corporate governance statement (see Appendix 8) and send this to its NHS Improvement regional team, with the exception of the statement concerning quality governance for which an appropriate timescale for compliance should be determined by the trust board and agreed with us.
Figure 3: Overview of our approach to reviewing significant or material transactions

Relative size, SOF segmentation and additional risk factors determine classification and level of review.

### Classification

<table>
<thead>
<tr>
<th>Classification</th>
<th>Reportable to NHS Improvement</th>
<th>Review</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small</td>
<td>No</td>
<td>No review</td>
</tr>
<tr>
<td>Material</td>
<td>Yes</td>
<td>Review of certification submission</td>
</tr>
<tr>
<td>Significant</td>
<td>Yes</td>
<td>Detailed transaction review</td>
</tr>
<tr>
<td>Statutory</td>
<td>Yes</td>
<td>Level of review per above</td>
</tr>
</tbody>
</table>

### Risk Factors

<table>
<thead>
<tr>
<th>Risk factor</th>
<th>Example of major risk</th>
<th>Example of other risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquirer's UoR</td>
<td>Finance score of 4</td>
<td>Finance score of 3</td>
</tr>
<tr>
<td>Acquirer's quality</td>
<td>CQC rating of 'requires improvement'</td>
<td>CQC rating of 'requires improvement' for well-led</td>
</tr>
<tr>
<td>Leverage</td>
<td>Capital servicing capacity of enlarged trust is &lt;1.75</td>
<td>Capital servicing capacity of enlarged trust is &lt;2.5</td>
</tr>
<tr>
<td>Experience of services</td>
<td>A significant change in scope of activity of acquirer</td>
<td>A minor change in scope of activity of acquirer</td>
</tr>
<tr>
<td>Target quality</td>
<td>CQC rating of 'inadequate'</td>
<td>CQC rating of 'requires improvement'</td>
</tr>
<tr>
<td>Target's SOF rating</td>
<td>Segment 4</td>
<td>Segment 3</td>
</tr>
</tbody>
</table>

Key: use of resources (UoR); Single Oversight Framework (SOF).
If the board is unable to certify to us that it is satisfied that the above matters have been addressed, or to provide material on request to support the certification, it should explain why. We will consider this in assessing the risk associated with the transaction and whether additional assurance work is required.

**Significant transactions – requirements**

Where we classify a transaction as significant, foundation trusts must, in addition to the evidence requested for a material transaction, provide us with a greater degree of assurance regarding the risk of breaching their licence conditions, or for NHS trusts, the equivalent of these conditions. This will comprise a high level review at the strategic case stage focusing on strategic rationale and identification of red flags (as set out in Table 3 in Section 3.2) with the majority of the detailed work undertaken at the business case stage. At the business case stage, trusts must prepare financial plans in a suitable long-term financial model (LTFM) and should contact us at nhsi.modelqueries@nhs.net to confirm the most suitable model to use.

The detailed review considers how the proposed transaction may affect the risk profile of the ongoing trust, or the new trust in the event of a merger.

We will look in detail at up to **four domains** depending on the nature and risks of the proposed transaction:

- strategy
- transaction execution
- quality
- finance.

Full details of what we will review and how we will engage with trusts is given in Section 3.

**Good practice guidance**

Appendix 3 sets out good practice guidance on governance and policy for all material investments. Trusts are strongly encouraged to consider the good practice processes described even if their proposed transactions and investments do not trigger our review or reporting thresholds. While following good practice guidance cannot guarantee a successful investment, trusts that adhere to our advice can expect to reduce their chance of making an imprudent or inappropriate investment.
Investment risk remains solely with trusts and nothing in Appendix 3 should be construed as professional advice. Independent professional advice should be sought where appropriate.
3. Engagement with NHS Improvement – mergers and acquisitions

This section describes the different stages of engagement between trusts planning a relevant transaction and NHS Improvement, and what we will review at each stage of the process. It focuses on the rationale for the transaction, how it benefits patients and/or commissioners and the potential competition issues, and evaluates the risks to successful execution.

Trusts are encouraged to engage with their NHS Improvement regional team as early as possible to discuss the potential scope and options before the transaction process starts. Early engagement gives our regional teams the opportunity to advise trusts on their specific proposals and to draw on expert support in a number of areas from our central teams, such as competition – including the likelihood of a CMA review, as well as legal and regulatory advice. Where a trust decides to formally notify the CMA of a transaction, our early advice should mean the trust is better prepared for the CMA review process and that this proceeds swiftly.

If the transaction meets the criteria for classification as significant, and therefore requires a detailed review, the trust’s NHS Improvement regional team will agree with the trust a detailed timeline for the strategic case stage and outline a timeline for the business case and approvals stages of the transaction process. In addition, the team will confirm the level of detail we will require in the strategic case and the supporting documents we will need to be provided.

3.1. Stages of engagement with us

Our new streamlined three-stage transaction review process addresses recommendations from reviews of previous advice published by Monitor and TDA, with further consideration of emerging policy issues – for example, in relation to funding, timescales and alignment with new care models. It takes on board lessons learned from recent transactions and aims to reduce the time a transaction takes to complete (and thus costs).
The three stages of NHS Improvement’s transaction review process and engagement with trusts are:

- **Stage 1**: the ‘strategic case’ stage is when a trust(s) evaluates its strategic options to proceed. Available options need to be assessed for their alignment to local health economy plans, potential benefits as well as how they support the trust(s) to overcome its challenges. The strategic case stage generates a preferred option – that is, the proposed organisational transaction. The trust(s) needs to be able to articulate the existing challenges addressed by the preferred option.

- **Stage 2**: the ‘business case’ stage is when a trust(s), having identified its preferred option, develops a full business case and plans for how the transaction will be delivered successfully.

- **Stage 3**: the ‘approvals’ stage includes all the necessary regulatory and legal steps involved in completing the transaction.

This revised process has a stronger focus on stage 1 – the strategic case: understanding the existing operational, quality, cultural and financial issues, and why a transaction may be the best way to address these and secure improvement for patients (see Section 3.2 below). The strategic case requires more detail than previously requested at strategic outline case (SOC) stage (eg overview of financial impact, transaction costs, synergies, etc) but less detail than for the previous outline business case (OBC) stage review. An OBC no longer needs to be prepared for an acquisition or merger as a separate review stage: the new strategic case stage combines the previous ‘SOC’ and ‘OBC’ requirements into a single review for organisational transactions. While there is no obligation to prepare an OBC for detailed NHS Improvement review, trust boards still need to consider their governance arrangements carefully to ensure they maintain their own appropriate oversight as the case develops.

Where trusts are considering capital investments or PFI schemes, an OBC will still need to be prepared as outlined in the HM Treasury guidance included in Section 4.

### 3.2. Stage 1: Strategic case

At the strategic case stage, both trusts and NHS Improvement have the opportunity to determine whether the case for a proposed transaction is robust and workable
enough for it to proceed to the business case stage (which typically requires significant resources). The strategic case stage may help to inform the trust’s decision on whether or not to notify the CMA of the transaction.

For significant transactions, including mergers and acquisitions, the scope of the strategic case stage varies with the individual circumstances. Figure 4 below summarises the scope and activity during a relatively extensive strategic case stage for an acquisition or merger.

Where a trust has identified that it needs a solution to deliver long-term sustainability, we will also support the trust to do this. The nature of the support available to trusts depends on whether it is a foundation trust or an NHS trust, and what roles Monitor and the TDA, respectively, play in finding a solution. Further detail on the support available is included in Section 3.5.

For acquisitions and mergers, the NHS Improvement team undertaking the review requests the trust’s strategic case and submissions for review, typically including the finalised strategic options analysis, preliminary financial analysis, preliminary post-transaction integration plans, outline of transaction governance and programme management plan (see Appendix 5 for further illustrative detail on submissions).

Our strategic case review typically takes three to four weeks (potentially longer if an analysis of relevant patient benefits is required) and involves some meetings and interviews at the trust’s premises, as well as separate discussions with CQC and key commissioners. In reviewing finances we look at the main assumptions underpinning the strategic case and how it will lead to a sustainable enlarged entity.

Through our review we seek to identify whether any major problems or red flags would risk the transaction not proceeding to a successful conclusion. A non-exhaustive list of red flags is given in Table 3 below. These red flags have been identified from what we have learned from previous transactions (including those aborted before completion) as well as from reflecting on the current financial and operational pressures faced by providers; they may make it harder to set up the transaction for success and thus pose a risk to services for patients.

We ask key questions covering the four domains listed in Section 2.2 as part of our review (see Section 5 and Appendix 5 for more detail).
Our review usually concludes with a formal meeting between us and selected members of the trust board to discuss the strategic case and any issues (including red flags) identified. After this meeting, we will decide whether or not to support the strategic case and the development of a business case.

Following this meeting we will notify the trust in writing of our decision and identify:

- any strategic business issues that require further attention in the business case stage
- whether the transaction is likely to raise any competition issues and, if necessary, our suggestions for further work to examine them
- extent of further work required to complete the analysis and presentation of relevant patient benefits
- our view on the timeline for business case review and completion of the transaction
- if relevant, any major problems (red flags) that may prevent the transaction proceeding according to the planned timeframe. See Table 3 below for a list of red flags.

Table 3: Strategic case ‘red flags’

<table>
<thead>
<tr>
<th>Key questions</th>
<th>Red flag</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is there a clear strategic rationale for the transaction?</td>
<td>Lack of evidence to support proposed option, no analysis of alternative options</td>
</tr>
<tr>
<td></td>
<td>Lack of evidence of system alignment</td>
</tr>
<tr>
<td>Is quality maintained or improved by the transaction?</td>
<td>Concerns about quality at the acquirer</td>
</tr>
<tr>
<td></td>
<td>CQC overall rating of ‘requires improvement’ or ‘inadequate’ for the acquiring trust or ‘requires improvement’ on well-led</td>
</tr>
<tr>
<td></td>
<td>Appears likely to create a reasonable prospect of substantial lessening of competition and patient benefits unclear</td>
</tr>
<tr>
<td>Is the transaction likely to result in an entity that is financially viable?</td>
<td>Concerns over finances</td>
</tr>
<tr>
<td></td>
<td>No clear source for transaction/transition funding to support the transaction to proceed</td>
</tr>
<tr>
<td><strong>Is the trust able to execute the transaction successfully?</strong></td>
<td><strong>Benefits over the counterfactual not demonstrated</strong></td>
</tr>
<tr>
<td>-----------------------------------------------------------</td>
<td>---------------------------------------------------------</td>
</tr>
<tr>
<td>Execution risk</td>
<td><strong>Acquirer failing operational targets</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Significant vacancies at board level in the acquirer</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Complications in legal structure (eg section 57A dissolution of the foundation trust)</strong></td>
</tr>
<tr>
<td></td>
<td><strong>No clear plan for delivery</strong></td>
</tr>
</tbody>
</table>

After we write to the trust, it is the trust’s decision whether or not to proceed with the transaction and whether to notify the CMA of it. However, we expect transactions to proceed past the strategic case stage only if the trust and NHS Improvement are assured that any major concerns identified through the review are outweighed by the benefits to patients arising from the transaction and appropriate mitigations can be put in place to manage the risks.

If either trust is in SOF segment 3 or 4, NHS Improvement, as part of mandated support, may stop the transaction or require additional work before the strategic case is allowed to proceed to business case stage.

If the CMA reviews the merger, we will give:

- advice on the relevant customer benefits of the transaction
- our views on the potential competition issues where appropriate.

In these cases, the preparatory work done by the trust during its early engagement with us may mean that the CMA can conduct its review more quickly. In any event, trusts should talk to us to understand the best timing for the NHS Improvement transaction review process and CMA review. Our business case review (stage 2) is unlikely to start before the CMA review is complete, but in exceptional circumstances a parallel competition and transaction assurance review may be possible.

In exceptional circumstances, NHS Improvement may use enforcement powers to stop a transaction from proceeding beyond this strategic case stage.
If our initial assessment finds that the transaction is ‘material’, the trust’s NHS Improvement regional team will liaise with the trust about the board certification required before the transaction is agreed (see Appendix 8). If we find that the transaction is ‘significant’ and therefore requires a detailed review, the regional team will discuss the scope and timings with the trust, including providing NHS Improvement specialist regulatory support (e.g., legal, competition). Early engagement with us will also help us prioritise and plan our resources to meet the requirements of the transaction timeline.

Figure 4 below outlines the key considerations for a trust when developing its strategic case.
Figure 4: Example overview of strategic case requirements

<table>
<thead>
<tr>
<th>Key trust considerations</th>
<th>Stage 1: Strategic case</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Strategic case evaluation</strong></td>
<td>- Engagement with, and views of, commissioners and other key stakeholders</td>
</tr>
<tr>
<td>- Trust’s current strategy, strategic issues and challenges</td>
<td>- Timetable and resources for business case review</td>
</tr>
<tr>
<td>- Strategic options analysis and evaluation:</td>
<td>- Board’s capability, capacity, experience to deliver transaction, including:</td>
</tr>
<tr>
<td></td>
<td>- skills capability gaps; changes/additions required to post-transaction governance and management</td>
</tr>
<tr>
<td></td>
<td>- Analysis of key financial assumptions (transaction costs, synergies, funding, service developments, and drivers of the deficit)</td>
</tr>
<tr>
<td></td>
<td>- Identification of skills and expertise critical for transaction success</td>
</tr>
<tr>
<td></td>
<td>- Compliance with national access and outcomes targets</td>
</tr>
<tr>
<td></td>
<td>- Key transaction success factors, risks and mitigations</td>
</tr>
<tr>
<td></td>
<td>- Outline post-transaction integration plans</td>
</tr>
<tr>
<td></td>
<td>- Outline transaction governance and programme management plan</td>
</tr>
<tr>
<td></td>
<td>- Key transaction terms expected/required</td>
</tr>
<tr>
<td><strong>Legal and regulatory requirements</strong></td>
<td>- Legal ability to undertake transaction</td>
</tr>
<tr>
<td></td>
<td>- Plans for regulatory processes and approvals</td>
</tr>
<tr>
<td><strong>Decision to proceed to full business case</strong></td>
<td>- Decision on whether or not to notify the CMA of proposed transaction</td>
</tr>
<tr>
<td></td>
<td>- Translation affordability</td>
</tr>
</tbody>
</table>

**Scope**
- Review and challenge of the transaction’s strategic rationale, including assessing:
  - Which challenges faced by the trust is the strategy seeking to address?
  - What other options were considered to address these challenges?
  - What was the basis for selecting the proposed transaction approach?
- Review of trust’s assessment of potential competition issues
- Advice on trust’s approach to assessing relevant customer benefits
- Feedback on trust’s draft submission on relevant customer benefits
- Assessment of key financial assumptions and trust’s capability, capacity and preparedness for the proposed transaction

**Interaction**
- **Submissions**
  - Strategic options analysis and rationale for transaction
  - Analysis and evidence of engagement with commissioners and other key stakeholders
  - Preliminary financial assumptions, outline transaction governance and programme management plan, outline integration plan, and key transaction risks and mitigations
  - Assessment of competition issues
  - Draft submission on relevant customer benefits (if required)
- **Timing, format, output**
  - Four-week review of above submissions, including some meetings on site, followed by an executive-level meeting in which the strategic basis of the proposed transaction and how it benefits patients are presented and discussed
  - Patient benefits analysis if required (timing variable)
  - Formal meeting between trust board and NHS Improvement
  - Letter to trust setting out any outstanding strategic issues, scope of assurance review and level of support to be provided at business case stage, and NHS Improvement’s decision on whether transaction should proceed to the business case stage
3.3. Stage 2: Business case

Stage 2 – our business case review – usually begins shortly after the:

- main due diligence workstreams have been completed
- funding and the heads of terms have been agreed
- business case documentation, including the LTFM, has been approved by the trust board.

When a trust decides to proceed to the business case stage of the evaluation it will start several planning and evaluation workstreams, including the main due diligence reviews. The business case documentation, LTFM and other submissions required for our detailed review are normally finalised once all the due diligence workstreams have been completed and reported to the trust board; they are given to us once the board has reviewed and approved them.

Figure 5 below outlines the key considerations for a trust when developing its business case. The scope of and submissions required for our detailed review will have been outlined in our early engagement with the trust and following the completion of our strategic case review. We will agree with the trust a detailed plan and timeline for our stage 2 detailed review, including the agreed content and timing of required submissions. It is important that submissions from the trust are made according to the agreed schedule so that all parties can keep to the agreed timeline. All significant transactions will be subject to a detailed review at stage 2. Our review will focus on the key questions listed in Section 5, with the work undertaken at stage 2 reflecting (and where necessary updating) the extent of work undertaken during stage 1 and its findings.

As part of our business case review, our risk assessment team will spend a few days at the trust holding meetings and interviews. The team’s project manager will advise the trust who they wish to interview and will agree a mutually convenient meeting schedule before the detailed review process gets underway. Our team will normally need to interview (among others):

- the board members
- the finance team
- clinical directors
• the integration committee or project management team responsible for the implementation and integration plans.

We recognise the trust’s management team’s time and resources will be heavily committed to other priorities at this stage in a transaction. Our project manager will work closely with the appropriate manager at the trust to agree a timeline for submissions and meetings that is feasible, fits in with the rest of the trust’s timeline and plans, and meets the requirements for the appropriate transaction risk rating.

**Steps at stage 2**

**Interviewing important stakeholders**

As well as our meetings at the trust, our team will also discuss aspects of the trust and the proposed transaction with some external parties, usually (but not limited to) CQC, local clinical commissioning groups (CCGs), internal auditors, external auditors and any funding providers.

**Long-term financial model**

As part of our detailed review of the business case, we examine the trust’s base case LTFM and present an adjusted case (assessor case) that tests the assumptions to ensure the case is sufficiently stretching but realistic in terms of delivery. It typically incorporates several generic sensitivities (reflecting our annually published views of cost inflation and efficiency) and any specifically identified sensitivities. This assessor case is the main basis for our assessment of the trust’s post-transaction financial viability and sustainability.

We also present a downside case (which adjusts the trust’s base case for a reasonable set of downside risks) to help assess whether the trust has effectively mitigated the transaction’s key risks by articulating plans to address them and demonstrating the capability to deliver these plans.
### Stage 2: Business case

#### Business case evaluation
- Finalised business case including final post-transaction integration plan (PTIP), which includes timetable, resources, leadership, budget, accountabilities
- Full due diligence (commercial, financial, clinical, operational, workforce, IT, estate, legal/regulatory)
- LTFM, including finalised financing, and other key assumptions and downside risks and mitigations agreed
- Impact of transaction on the financial and use of resources metrics set out in the Single Oversight Framework
- Transaction risk identification/calculation, quantification, management and mitigation
- Cultural behavioural alignment
- Managing and resourcing information requirements of external and internal due diligence and NHS Improvement’s detailed review
- Sufficiency of input from line/operational management to business case, PTIP, and external advice and due diligence
- Contingency plans (e.g., for key personnel/loss)
- Communication plan
- Consultation undertaken, where required

#### Structure and finance
- Evaluation of structuring/finance options
- Optimal financing structures/sources

#### Deal process, negotiation
- Heads of terms
- Transaction agreement
- Relevant staff, assets and liabilities to transfer

#### Finalising the decision
- Assessment of whether the business case stage has confirmed or changed the transaction’s status as preferred strategic option
- Check for any remaining information gaps
- Trust properly prepared for Day-1 and integration challenges

### Key trust considerations

#### NHS Improvement

<table>
<thead>
<tr>
<th>Scope</th>
<th>Interaction</th>
</tr>
</thead>
<tbody>
<tr>
<td>If transaction is significant, a detailed review scope to be completed, covering where relevant:</td>
<td>Key submissions (significant transactions):</td>
</tr>
<tr>
<td>Strategy</td>
<td>LTFM, base and downside cases</td>
</tr>
<tr>
<td>Robustness of transaction’s strategic rationale (risk-based update of work undertaken at the strategic case stage if required)</td>
<td>Due diligence reports (financial, legal, clinical, estate, workforce, IT)</td>
</tr>
<tr>
<td>Transaction execution</td>
<td>Full transaction risk assessment and framework for ongoing risk management</td>
</tr>
<tr>
<td>Board capability, management capacity</td>
<td>and mitigation</td>
</tr>
<tr>
<td>Identification, quantification, mitigation and ongoing management of transaction’s risks</td>
<td>Full PTIP, including detailed project timeline,</td>
</tr>
<tr>
<td>Robustness and comprehensiveness of the PTIP:</td>
<td>transaction governance, post-transaction governance, integration/P&amp;O team,</td>
</tr>
<tr>
<td>– benefits realisation plans</td>
<td>benefits realisation</td>
</tr>
<tr>
<td>– transaction governance, lines of responsibility/accountability,</td>
<td>Board and medical director certifications (to be made by both parties jointly/in the case of a merger)</td>
</tr>
<tr>
<td>delivery milestones</td>
<td>Board statements, memoranda and independent opinions on PTIP, quality</td>
</tr>
<tr>
<td>– dedicated integration resource</td>
<td>governance, working capital, financial reporting procedures (to be made by both</td>
</tr>
<tr>
<td>– skills/capability gaps, changes/additions required to post-transaction governance and management</td>
<td>parties jointly/in the case of a merger) see Appendix 1 for further detail</td>
</tr>
<tr>
<td>Compliance with all regulatory and legal requirements</td>
<td>Timing, format (significant transactions):</td>
</tr>
<tr>
<td>Quality</td>
<td>Typically 6–10 weeks for review of submissions,</td>
</tr>
<tr>
<td>Review of independent report and opinions on quality governance</td>
<td>including various meetings on site</td>
</tr>
<tr>
<td>arrangements</td>
<td>Board to-board meeting after about 7–8 weeks</td>
</tr>
<tr>
<td>CQO views</td>
<td>Transaction risk rating formally notified in a letter to the board</td>
</tr>
</tbody>
</table>
Review of third-party reports

Our detailed review at stage 2 often runs parallel to those of independent accountants or experts appointed by the trust to provide independent opinions (see Appendix 11). Our risk assessment team will want to review and discuss with the trust the findings of the independent accountants and any other third-party specialists from their due diligence and reviews of working capital financial reporting procedures, the post-transaction integration plan (PTIP) and quality governance. Drafts of these reports are required in advance of the board-to-board meeting (see below) and must be finalised and approved before we assign a transaction risk rating.

Board-to-board meeting

The board-to-board meeting is a key element of our assurance of a transaction business case and is a meeting between the trust board and the NHS Improvement board. This takes place after we have largely completed our detailed assurance review, around six to eight weeks after we receive the trust’s full business case submissions. We will usually require the full board of the trust (or in the case of a merger the steering group or ‘interim board’\(^\text{11}\) to attend. The meeting will usually involve a short presentation by the trust followed by questions from our board on the areas identified as requiring challenge by the risk assessment team’s detailed review. We will advise the trust of the format and key areas for discussion before the meeting. This will give the trust the opportunity to respond to any concerns raised during the board-to-board meeting.

Transaction risk rating

After the board-to-board meeting and after taking into account the response to any issues raised through the review, our risk assessment team will finalise the papers it will present at a decision meeting, at which the risk rating (green, amber or red) can be approved.

To determine a risk rating, the ratings for each of the questions we ask to probe a particular domain are aggregated to provide an overall rating for that domain. In turn, the rating for each domain is consolidated into a single transaction risk rating of green, amber or red (see Table 4). The key risks identified during the

\(^{11}\) ‘Interim board’ is defined in Appendix 1, where we look at the transaction-related roles and responsibilities of directors and governors.
course of the review will be discussed at the board-to-board meeting we hold with the trust(s).

The risk rating is subject to the agreement of any investment adjustments the trust has agreed as part of the transaction. The requirements for obtaining an investment adjustment are discussed in Appendix 7.

**Table 4: NHS Improvement’s transaction risk rating categories**

<table>
<thead>
<tr>
<th>Risk rating</th>
<th>Finding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Green</td>
<td>No material concerns have arisen from NHS Improvement’s detailed review.</td>
</tr>
<tr>
<td>Amber</td>
<td>Some significant issues have arisen from NHS Improvement’s detailed review that the trust will need to address and that may require ongoing regulatory monitoring. However, no issue is serious enough to stop or delay the transaction.</td>
</tr>
<tr>
<td>Red</td>
<td>NHS Improvement considers the issues arising from the review to be serious enough to delay the transaction. The trust will need to address the risks posed by these issues by restructuring the proposal. If this trust considers this is impossible, we will use our regulatory powers to stop the transaction if required.</td>
</tr>
</tbody>
</table>

**3.4. Stage 3: Approvals**

A trust can proceed to transaction stage 3 once we have issued an amber or green risk rating as the end of stage 2. Stage 3 will typically involve finalising the transaction agreement, obtaining all final approvals for the transaction and submitting the statutory documents to enable completion.

Approvals will be needed from the trust board and, for foundation trusts only and if the transaction is a statutory transaction, the council of governors. For NHS trusts being acquired, merged or dissolved, the Secretary of State’s support will need to be obtained.

Figure 6 outlines the key requirements for a trust as part of its approval stage. The legal requirements for each type of transaction are summarised below, with further detail given in Appendix 1.
Figure 6: Example overview of approvals requirements (for a section 56A acquisition)

Stage 3: Approvals

<table>
<thead>
<tr>
<th>Decision, closure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agree, re-negotiate or withdraw</td>
</tr>
<tr>
<td>- Finalised transaction agreement, including agreed:</td>
</tr>
<tr>
<td>- value, funding</td>
</tr>
<tr>
<td>- working capital arrangements</td>
</tr>
<tr>
<td>- transition arrangements</td>
</tr>
<tr>
<td>- dispute resolution process</td>
</tr>
<tr>
<td>- exit/break options and budgets in place</td>
</tr>
<tr>
<td>- Any material changes to agreements, assumptions or new information to be provided to NHS Improvement and any changes agreed before closure</td>
</tr>
<tr>
<td>- Investment/transaction committee and board review and approval process</td>
</tr>
<tr>
<td>- Council of governors’ vote</td>
</tr>
<tr>
<td>- Secretary of State application (where an NHS trust is being merged or acquired)</td>
</tr>
<tr>
<td>- Any other relevant stakeholder approval</td>
</tr>
<tr>
<td>- Internal and external communication</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Execution, implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Transitional arrangements and processes to completion/handover</td>
</tr>
<tr>
<td>- PTIP and integration management team/PMO and budgets in place</td>
</tr>
<tr>
<td>- Integration milestones and success measures defined and measurement frameworks in place:</td>
</tr>
<tr>
<td>- metrics</td>
</tr>
<tr>
<td>- data collection and presentation systems</td>
</tr>
<tr>
<td>- frequency review, accountability</td>
</tr>
<tr>
<td>- Post-transaction performance management</td>
</tr>
<tr>
<td>- Post-transaction risk management</td>
</tr>
</tbody>
</table>

| Key trust considerations |

<table>
<thead>
<tr>
<th>Scope</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Propose and agree format, scope and timeframe of any enhanced monitoring attached to an amber transaction risk rating</td>
</tr>
<tr>
<td>- For statutory transactions: review at the necessary preparatory steps for grant of application. If application granted, issue documents necessary to complete the transaction</td>
</tr>
<tr>
<td>- Liaison with DH for Secretary of State approval (where parties include an NHS trust)</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Interaction</th>
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</thead>
</table>

<table>
<thead>
<tr>
<th>Key submissions</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Final version of transaction agreement and any separate funding agreements</td>
</tr>
<tr>
<td>- Statutory transactions: formal application to Monitor/NHS Improvement, including proposed new/revised constitution (if applicable, see Appendix 1)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Timing, format</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Statutory transactions: after issues of NHS Improvement’s transaction risk rating and governors’ vote; receipt of formal application and grant thereof on satisfaction that the necessary steps to prepare for the transaction have been completed (see Appendix 1 for details)</td>
</tr>
</tbody>
</table>
Trusts will need to make applications to NHS Improvement and/or the Secretary of State with the supporting documents as set out below. We will check applications and the accompanying documents for accuracy and completeness. We may seek additional supporting information if necessary, but will not review the application documents in detail. However, to approve the transaction, we need to be satisfied that trusts have taken all the necessary steps to prepare for the transaction (outlined below in Table 5).

We understand trusts will want to communicate the outcome of any transaction decision to patients, staff and other stakeholders. We do not normally make statements on transactions until the review process is complete and a formal decision has been made. Trusts should discuss their communications plans with their regional NHS Improvement communications team to ensure any announcements are aligned and appropriate for the particular stage of the process.

**Mergers (section 56)**

A joint application from the merging trusts must be made to NHS Improvement accompanied by:

- written acknowledgement of the risk rating
- evidence of approval by a majority of governors of each foundation trust
- in the case of a merger with an NHS trust, a letter of support from the Secretary of State
- details of the property and liabilities being transferred to the new foundation trust
- the proposed constitution for the new foundation trust.

If the application is granted, the two trusts will be dissolved and a new foundation trust will be established. We will confirm this in a Grant of Merger and will make a statutory order dissolving the old trusts and transferring the property and liability to the new foundation trust.

**Acquisitions (section 56A)**

A joint application from the trusts must be made to NHS Improvement accompanied by:

- written acknowledgement of the risk rating
• evidence of approval of the transaction by a majority of the governors of the foundation trust(s)
• in the case of an acquisition of an NHS trust, a letter of support from the Secretary of State
• the proposed constitution of the acquiring foundation trust.

If the application is granted, the target trust will be dissolved and the assets and liabilities transferred to the acquiring trust. We will confirm this in a Grant of Acquisition.

Separations (section 56B)

An application from a foundation trust for its separation into two or more new foundation trusts must be made to NHS Improvement accompanied by:

• evidence of approval by a majority of governors of the foundation trust
• specification of the proposed property and liabilities to be transferred to each new foundation trust
• the proposed constitutions for each new foundation trust.

If the application is granted, two new foundation trusts will be created and the allocated assets and liabilities outlined in the application will be transferred to them. NHS Improvement will make a statutory order dissolving the old trust and transferring the property and liabilities to the new foundation trusts.

Dissolutions (section 57A)

An application from a foundation trust for its dissolution must be made to NHS Improvement accompanied by:

• evidence of approval by a majority of the trust’s governors
• evidence that the trust has no liabilities.

If the application is granted, the trust will be dissolved by statutory order and any assets will be transferred to the Secretary of State, as appropriate.
Schedule 4

An application from an NHS trust to be dissolved must be made to the Secretary of State. The trust must also complete the required consultation. If the Secretary of State accepts the application, he/she will make statutory orders to dissolve the trust and transfer its property and liabilities either to him/her or to a receiving trust(s).

Necessary steps to prepare for the transaction

NHS Improvement can only grant an application for a merger, acquisition, dissolution or separation where we are satisfied that the trust(s) has taken the necessary steps to prepare for the transaction.

Table 5 below sets out our view of what constitutes ‘the necessary steps’ for small, material and significant transactions.

Table 5: Transaction requirements

<table>
<thead>
<tr>
<th>Classification</th>
<th>Necessary preparatory steps</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small</td>
<td>The trust(s) has submitted all the relevant documents for the statutory transaction</td>
</tr>
<tr>
<td>Material</td>
<td>The trust(s) has submitted all the relevant documents for the statutory transaction</td>
</tr>
<tr>
<td></td>
<td>The trust(s) has reported the transaction to NHS Improvement</td>
</tr>
<tr>
<td></td>
<td>The trust(s) has submitted the certifications to NHS Improvement and we are satisfied with them</td>
</tr>
<tr>
<td>Significant</td>
<td>The trust(s) has submitted all the relevant documents for the statutory transaction</td>
</tr>
<tr>
<td></td>
<td>The trust(s) has reported the transaction to NHS Improvement (Monitor)</td>
</tr>
<tr>
<td></td>
<td>The trust(s) has submitted the certifications to NHS Improvement and we are satisfied with them</td>
</tr>
<tr>
<td></td>
<td>The transaction has been through NHS Improvement’s detailed review and has been given a transaction risk rating of green or amber</td>
</tr>
</tbody>
</table>

12 The National Health Service Trusts (Consultation on Establishment and Dissolution) Regulations 2010/743.
Full details and guidance on the requirements for statutory transactions is given in Appendix 1 alongside guidance on the steps and procedures for directors and governors involved in completing statutory mergers and acquisitions. Governors should also refer to guidance for governors on their statutory duties.

**Enhanced oversight**

During stage 3 we may propose the format, content and timeframe of enhanced post-transaction oversight.

**Transitional arrangements and post-completion plans**

The completion element of stage 3 may include implementing any agreed transitional management arrangements for the period before completion (such as an interim board), and the activities and workstreams in the integration plans needed to achieve objectives immediately after completion.

**3.5. NHS Improvement’s role as a vendor of trusts**

All transaction proposals need to make clear at the outset the benefits they intend to achieve and/or the problems they wish to resolve. Often a transaction may be part of a solution, but it is rarely the solution itself. A clear strategic rationale in the context of local sustainability and transformation partnerships (STPs) is essential before proceeding.

Most transaction proposals originate in local health economy discussions between providers and commissioners. However, they sometimes arise from locally identified opinion or from NHS Improvement and/or CQC proposing a successful trust combines with an unsuccessful one to ‘rescue’ it or ‘turn it around’. Such proposals aim to provide a way to sustain good quality and financially viable healthcare in a particular location.

An options appraisal should be completed early in the process to determine whether local issues or concerns are best met by a transaction or another strategy or intervention. This should be health-economy based, adopt a set of well-understood assessment criteria and involve a systematic review of the different options for intervention. Having identified a ‘preferred option’, a plan is required to take it forward.
Where the target in a transaction is an NHS trust, NHS Improvement (through the statutory transaction responsibilities of TDA\textsuperscript{13}) will normally have a role as ‘vendor’ of that trust. The trust and the transaction will be subject to our support and assurance processes. We will work with the trust to ensure it has the necessary support to navigate the transaction processes, and to maintain board focus on quality, operational and financial performance and on risk management.

As part of the vendor role, we will review and comment on the acquiring trust’s strategic business case and business case before they are finalised and submitted to our risk assurance team. The NHS Improvement teams will share information and co-ordinate their review approaches, but maintain the necessary separation to avoid conflicts of interest.

Towards the end of the process (stage 3) NHS Improvement, as part of our vendor role, will:

- sign the agreed transaction agreement
- confirm to the Secretary of State that various aspects of the transaction (including quality, sustainability and taxpayers’ value for money) have been assured
- seek Secretary of State support for the NHS trust to be acquired or merged with a foundation trust or support the trust through the process leading to its dissolution under schedule 4.

If the target is an unsustainable foundation trust, NHS Improvement (through Monitor) does not have an equivalent statutory ‘vendor’ role; however, we will offer appropriate support to the foundation trust as part of our general regulatory remit.

These processes are explained in more detail below.

**Vendor transaction process**

**Sustainability review (pre-transaction)**

The need for a transaction because an NHS trust or foundation trust is unsustainable may be identified by the trust itself and/or through discussions

\textsuperscript{13} The TDA can recommend that NHS trusts be acquired, dissolved or merged with a foundation trust. It also has the function of facilitating transactions and liaising with potential acquirers.
around the NHS Improvement regional team's application of the SOF process – for example, the detailed assessment of the trust's two-year operational plan or intermittent review of its longer-term strategy. It is part of NHS Improvement's (TDA) role to support NHS trusts to be sustainable. Where an NHS trust is considered unsustainable, NHS Improvement (TDA) has the role as 'vendor' to identify a suitable organisational solution. In the case of an unsustainable foundation trust, NHS Improvement (Monitor) will determine what, if any, regulatory intervention or support is required; this could involve a 'vendor' process.

If an NHS trust board or NHS Improvement has a significant concern about long-term sustainability, the NHS Improvement regional team may lead or commission a sustainability review with the NHS trust and system partners to determine the root cause of the problem.

**Options appraisal**

Once the reasons for unsustainability are identified, we will work with the trust to review options to address them. Options are likely to include varying forms of partnering with another organisation (on a spectrum from ‘buddying’, to some form of more formal management support agreement, through joint appointments, to a merger or acquisition). Further options may then be considered in terms of the ‘preferred partner’ to provide this support. Typically, this exploratory process takes three to four months, although in exceptional circumstances it can be expedited by NHS Improvement.

A permanent solution (for example, where a transaction or a longer-term management contract is preferred) may make it more difficult to quickly identify a preferred partner. Views locally as to which partner offers the best solution may differ. In such cases we may choose to invite proposals from a shortlist of potential partners, and then assess these against an agreed set of criteria that locally reflect the four domains set out in Section 5. These proposals would be equivalent to the strategic case described in Section 3.2 and NHS Improvement would select the trust we consider offers the plan most likely to deliver the greatest improvement in patient services, value for money and sustainability over the longer term. The selected trust will become known as the preferred partner. During this process we would work closely with the target NHS trust board and ensure staff are engaged in the process.
Once the preferred partner is identified (and supported by the local health economy) and a transaction is the preferred solution, we would recommend this preferred partner to the target NHS trust board, which would then need to agree to work with this partner to develop a business case for the transaction. In exceptional circumstances we may choose to direct the NHS trust board in this matter or take formal regulatory action.

**Strategic case**

We anticipate that the proposal on which the preferred partner is identified is equivalent to a strategic case, although there may be exceptions where further work is required, to be determined in discussion with the respective NHS Improvement regional team. For mergers, the parties would agree how to develop the strategic case and this should be approved by both boards before being submitted to NHS Improvement for our review and support, and before further resources are used to develop a business case.

**Management support agreements**

Once the preferred acquirer is identified it may enter into a short-term management contract with the target trust for the purposes of:

- developing a business case
- undertaking due diligence
- supporting the trust in the interim including by providing capacity at board level through joint appointments.

NHS Improvement (TDA) can provide commercial advice to NHS trust(s) along with the standard templates for management support agreements available to all trusts; trusts should contact their NHS Improvement regional team for further information on these agreements. We retain the authority to appoint NEDs to the NHS trust board during this process. NHS Improvement (Monitor) will support foundation trusts on a bespoke basis.

As explained in Section 2, the types of transactions that may be subject to CMA merger review include management contracts when at least one of the parties is a foundation trust. The CMA also has the power to prevent or unwind any steps that have been taken to implement a merger (such as establishing joint governance). We therefore encourage trusts, where possible, to engage with NHS Improvement’s
competition team at an early stage before implementing any management contract or joint appointments. Our competition team can help trusts to assess the competition implications of the proposed joint management arrangements and aid discussions with the CMA about whether a CMA merger review is needed and the most appropriate time for this.

**Business case**

We will continue to support the target trust over the time it takes the acquirer to develop its business case. This support may include:

- chairing a transaction board to ensure a clear process and timescale for achieving the ‘sale’; that is, transfer of staff, assets and liabilities to the acquirer. A transaction board includes relevant stakeholders from the transacting trusts and is likely to include local stakeholders – for example, CCGs
- issuing a heads of terms and transaction agreement (standard templates) to document the process
- commercial negotiation of key terms to be assured on value for money
- providing legal support where appropriate
- providing assurance on value for money
- liaising with the Department of Health (DH) about backing for any commercial negotiation and the transfer of properties.

**Approvals**

For statutory transactions where an NHS trust is the target, the Secretary of State needs to support the transaction (section 56 and 56A) or make the final decision to dissolve the NHS trust and transfer its property and liabilities (schedule 4).

We will identify a lead director to co-ordinate these approval processes and to liaise with DH.

Table 6 below highlights the activities that we will support and facilitate as vendors.
### Table 6: Requirements for transactions involving an NHS trust

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Process</th>
<th>Provided by</th>
<th>Documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 56A acquisition or section 56 merger</td>
<td>Joint application to Monitor by NHS trust board and acquiring foundation trust</td>
<td>Both trusts</td>
<td>Joint application template</td>
</tr>
<tr>
<td></td>
<td>Support from the Secretary of State</td>
<td>DH</td>
<td>Letter from DH</td>
</tr>
<tr>
<td>Schedule 4</td>
<td>Application by the trust board to the Secretary of State for dissolution</td>
<td>NHS trust</td>
<td>Letter from NHS trust chairman/board minutes</td>
</tr>
<tr>
<td></td>
<td>Statutory consultation with HealthWatch(es) and Joint Staff Consultative Committee (JSCC) on the terms of the Dissolution and Transfer Orders</td>
<td>NHS trust</td>
<td>Consultation template; consultee responses; board minutes</td>
</tr>
<tr>
<td>Value for money</td>
<td>Assessment using DH’s general economic model (GEM) of the acquirer base case against a ‘do minimum’ counter-factual</td>
<td>Acquiring foundation trust (section 56A) or trust (schedule 4)</td>
<td>GEM spreadsheet</td>
</tr>
<tr>
<td>Transaction agreement</td>
<td>Signed by all parties Confirmation all Conditions Precedent are resolved Clarification of any funding support for the transaction</td>
<td>Acquiring foundation trust (section 56A) or trust (schedule 4)</td>
<td>Transaction agreement (template)</td>
</tr>
<tr>
<td>TDA assurance</td>
<td>Paper to NHS Improvement approval committee including assurance that all legal requirements have been satisfied (eg consultation, compliance with the Equalities Act) and that due process has been followed</td>
<td>NHS improvement</td>
<td>NHS Improvement board paper (standard format)</td>
</tr>
<tr>
<td>Property</td>
<td>Schedule of community properties requiring Secretary of State approval to transfer (where applicable)</td>
<td>Acquiring foundation trust (section 56A) or trust (schedule 4)</td>
<td>Trust spreadsheet</td>
</tr>
</tbody>
</table>
3.6. NHS Improvement governance of a transaction review

The main decisions NHS Improvement needs to make are to:

- confirm the advice to CMA on the benefits case (Monitor)
- support the strategic case to enable the transaction to move to business case stage (Monitor and TDA)
- sign the transaction agreement where an NHS trust is a party (TDA)
- recommend to the Secretary of State (TDA) that he/she should support a transaction involving an NHS trust, based on an assessment of value for money and assurance from NHS Improvement
- issue a risk rating of green, amber or red (Monitor and TDA)
- grant a statutory transaction (Monitor).

Only the Monitor role is relevant for foundation trust–foundation trust transactions and only the TDA role for NHS trust–NHS trust transactions.

The NHS Improvement board will only decide on transactions that are policy determining and/or very high risk. Our decision-making on all other transaction is devolved to committees within NHS Improvement.

As many decisions as possible are taken by the same NHS Improvement committee at a single sitting wherever possible – for example, decisions to risk rate the transaction as green, amber or red, to sign the transaction agreement and to seek the support of the Secretary of State.

We will advise trusts of the dates on which our relevant committees meet so these can be included in the overall project timeline.

Material/non-statutory transactions will be self-certified by the acquiring trust board, in agreement with the NHS Improvement regional team. We do not need to make any decisions for these transactions.
3.7. Post-transaction monitoring and compliance

Once a transaction is complete, we will continue to monitor the post-transaction trust for its compliance with the conditions of the NHS provider licence (or the equivalent of those conditions for NHS trusts) in line with the SOF.

If the risk rating is amber, we may enhance our monitoring of the trust and will discuss these arrangements with the trust during stage 3. Where a trust has agreed an investment adjustment, we will monitor the trust against the agreed trajectory.
4. Engagement with NHS Improvement – other significant transactions (non-M&A)

4.1. Overview

Non-organisational transactions (including projects funded through PFI, significant capital or property investments, and joint ventures and divestments) are not necessarily subject to the three-stage transactions process set out in Section 3.

Whether this guidance applies depends on which SOF segment the trust involved is in; foundation trusts that are not in distress (those in segments 1 and 2) should follow this guidance for the purposes of non-organisational transactions involving capital investments that meet the reporting thresholds outlined in Section 2. All NHS trusts and foundation trusts in financial distress (segments 3 and 4) undertaking capital investments should refer to the *Capital regime, investment and property business case approval guidance for NHS trusts and foundation trusts* for guidance on the necessary requirements.

As set out in Section 2, once a transaction has been reported to us, we will seek to understand more about the risks associated with it, to determine our regulatory approach, including whether we consider the transaction to be novel or contentious and outside the normal course of business.

Transactions that are not mergers or acquisitions (eg joint ventures) may be reviewable by the CMA. Trusts therefore need to consider whether the transaction involves a change of control and meets the thresholds detailed in Section 2.

Trusts may consider the creation of subsidiaries to deliver services such as estates management or pharmacy services, either as wholly owned subsidiaries or as joint ventures. If they are, they should consider the relative change in the organisation’s size (see Table 1) where services or assets are transferred from the trust when
determining whether transactions are reportable. Further to this, trusts creating subsidiaries should be mindful of the advice from DH in its letter to trusts dated 28 September 2017, which confirms that HM Revenue & Customs (HMRC) is actively investigating the healthcare sector in relation to tax avoidance schemes and that the level of scrutiny of any of these proposals is likely to increase. Trusts are reminded in this letter that tax avoidance schemes should not be entered into under any circumstances.

The governance and risk rating for all types of transactions are as described in Section 5.

4.2. Significant (non-PFI) capital investments

Significant capital or property investments are less likely than organisational transactions to require review at the strategic case stage, with the exception of significant joint ventures, depending on the relative size and risk profile. The scope of NHS Improvement’s detailed review at business case stage may also be significantly narrower than for a merger or acquisition, to remain proportionate to the risks involved.

In determining the level of review an investment needs, trusts need to be clear about how this is going to be funded. For example, capital investments requiring DH financing are likely to be subject to DH and potentially HM Treasury review that is additional to the review outlined below. Trusts should speak to their NHS Improvement regional team as soon as possible when planning a capital investment, to understand what level of review their proposal is likely to require and what time they should allow for this. Further detail is included in Section 7.

Figure 7 below shows a process that may be appropriate for a significant (non-PFI) capital investment project.
Figure 7: Overview of a significant (non-PFI) capital investment

1. Preliminary analysis
   - Outline plan and analysis of cost, resources, timeframe, cost-benefit, risk return, funding options, financial impact
   - Alternative options (including option to invest later) and consistency with strategy
   - Ability to execute - management capacity, resource, skills and expertise
   - Decision to plan and evaluate in detail, based on strategic fit, execution ability and affordability
   - NHS Improvement notification

2. Detailed evaluation and review
   - Refinement and expansion of outline analysis to full investment case and execution plan, including roles and responsibilities, transitional arrangements, risk analysis, mitigations and contingencies
   - Investment structure and financing
   - Commissioner support
   - LTfM reflecting finalised investment plan and agreed financing

3. Decision, execution
   - Board decision on proceed or cancel
   - Governors’ vote, if investment meets trust’s own definition of significant
   - Contractor’s agreement finalised and agreed

4.3. PFI projects

PFI projects are typically substantial investments by trusts, involving financial commitments over many years. They are very likely to be classified as significant transactions under the thresholds set out in Section 3.2. The procurement process to select a contractor can be lengthy and involve significant cost. We summarise the process that trusts typically follow for capital investment projects funded by a PFI in Figure 8 below. This process is subject to review and may change. We will update this guidance accordingly.
Outline business case

Our role in the financial review of a PFI scheme usually begins at the OBC stage, where we will do a preliminary review for affordability.

Our role at this stage is not to approve or reject a scheme, or issue any risk rating, but to give a preliminary view as to whether the proposed scheme would undermine the financial viability of the trust. We will advise the trust in writing of any risks to financial viability that we identify. Before the procurement process begins we will expect the trust board to address these risks or be assured that they can be addressed as the scheme is developed.
At the request of DH and/or HM Treasury we will normally share our analysis with them.

**Appointment business case**

If DH and HM Treasury approve a trust’s OBC, the procurement process begins and an ‘appointment business case’ is developed. At this stage, the trust will refine its project plans and LTFM with input from a shortlist of potential contractors.

We will conduct a substantive review of the scheme at this stage. We will assess whether, based on the latest assumptions and financial information provided by the trust, its financial viability would be unacceptably undermined if the scheme were to proceed. Again, our role at this stage is not to approve or reject a scheme – we will provide an indicative transaction risk rating that we expect the trust to take into account as it decides whether the scheme should progress to confirmation business case stage.

**Confirmation business case**

If DH and HM Treasury approve the appointment business case, the trust usually selects a preferred contractor and progresses to ‘final terms’. These terms will be reflected in the confirmation business case. We do a final review of the scheme to assess whether, based on the information provided by the trust, its financial viability would be unacceptably undermined if the scheme were to proceed, and whether the risks identified in earlier reviews (at outline and appointment business case stages) have been mitigated at the confirmation business case stage.

We will then issue a final transaction risk rating (see Section 5) in a letter to the trust, copied to DH and HM Treasury. This needs to be green or amber before a trust can enter into any legally binding commitment in relation to the scheme. A red-rated PFI scheme should be deferred or stopped: we will exercise our regulatory powers if necessary to do this.

**Limits of NHS Improvement’s role**

Our financial reviews of PFI schemes focus on their effects on financial viability. They do not include:

- any assessment of the benefit to patients in financial or other terms
• any assumption about the appropriateness or otherwise of any increase in payments to the trust in light of quality improvements
• a review of the clinical benefits of the scheme (considering whether a scheme is the most appropriate option to deliver quality improvements for patients is part of the value-for-money review done by DH and HM Treasury as part of their approval process for a PFI-funded scheme).

4.4. Consistency with the evolving new care model process

Summary of the integrated support and assurance process (ISAP) process

This guidance aligns our transaction risk rating review work to the ISAP by setting out a standardised transaction framework we can use to risk assess transactions in a new care model context and by providing assurance that the thinking behind similar processes is broadly aligned.

The standardised transaction process assumes that an options appraisal identifies a ‘preferred option’ (strategic case) that is then developed into a business case. The latter is then risk rated and approved (by NHS Improvement) before implementation.

The ISAP process is a joint NHS England and NHS Improvement process that begins with a commissioning decision to develop a new, longer-term service contract alongside an outcomes-based service specification. Then:

• the procurement process and the potential impact on the local health economy are considered by NHS England and NHS Improvement (checkpoint 1) before the tender is let
• the tender generates a provider sector response (one or more proposals)
• bids are assessed by the CCG and a decision is made on the ‘preferred proposal’
• the preferred bidder then develops this into a more detailed proposition. If (and only if) the preferred bidder is a trust, the proposal may then trip the transaction thresholds – for example, for a significant or material transaction
• NHS Improvement will then undertake an assurance review of the business case, feeding this into a joint assessment of the proposal with NHS England (checkpoint 2)
• if the business case is supported by the CCG, based on the advice of the checkpoint 2 panel, the trust will develop its mobilisation and implementation plans towards an agreed ‘go live’ date
• the CCG and the preferred bidder cannot sign a contract before they have successfully completed checkpoint 2 (including the provider receiving an NHS Improvement transaction risk rating where required)
• immediately before the ‘go live’ date, NHS England and NHS Improvement will undertake a readiness review (checkpoint 3).

Further guidance on ISAP is available.

An overview of the process together with an indicative timeline is shown in Figure 9 below.

The phases of the procurement process are summarised in Figure 10, with the main link with the organisational transaction process highlighted: when a trust is awarded a contract, warranting an assessment by NHS Improvement as to whether the proposed award triggers the transaction thresholds described in Section 3.2.
- The minimum expected timeline for the procurement of a complex contract is 15–18 months.
- The development of the full strategy – including the ISAP early engagement meeting – precedes the timelines.
- The bid development phase can extend this timeline depending on requirements from commissioners, providers and regulators.
- This timeline gives an example of how the checkpoints (CP1, CP2, CP3) will fit into a typical competitive procurement process.
Figure 10: Phases of the procurement process

### Checkpoints, sources of evidence and outputs

**Contract commissioning and negotiation**

- **Strategy**: Making the case for change
  - Making the case for change:
    - Commissioner business case for undertaking a complex contract procurement
    - Public and stakeholder engagement (Note: this may also be required at later stages if plans change)
    - Specification and selection criteria agreed

- **Procurement**: Provider selection
  - Selecting a provider:
    - PIN or contract notice issued to the market
    - Bids requested, submitted and, if applicable, discussion should take place
    - Assessment of the providers’ ability to have relevant registration and licensing in place
    - Preferred bidder identified

- **Mobilisation**: Managing go-live
  - Managing go-live:
    - Contract award
    - Mobilisation (including registration and licensing as required)
    - Workforce and other enablers

**Contract delivery and operation**

**Strategy**

- EE: An early engagement (EE) meeting takes place while a commissioner is developing a strategy which involves the commissioning of a complex contract.

- CP 1: Checkpoint 1 (CP1) takes place just before formal competitive procurement or other selection process begins.

- CP 2: Checkpoint 2 (CP2) takes place when a preferred bidder has been identified, but before the contract is signed. (NHS Improvement is responsible for performing the transaction review on NHS trusts and foundation trusts where the thresholds for transaction reviews are met, and NHS England is responsible for assuring the procurement aspect of that checkpoint).

- CP 3: Checkpoint 3 (CP3) takes place just before service begins.
5. Risk evaluation framework

5.1. Detailed review scope and good practice

Here we set out:

- the questions we ask to assess a proposed significant transaction against good practice
- our requirements for submission of evidence to support each question.

However, each significant transaction has a unique profile and we adapt the scope of our questions and the required submissions to meet the specific circumstances and risk profile of each transaction. The questions and submissions set out below illustrate a full scope, most likely appropriate for a significant acquisition or merger.

In addition to the evidence below, we expect trusts to have provided their analysis of potential competition issues and a draft submission on relevant customer benefits (if needed) during their early engagement with us either at stage 1 or in advance of stage 2.

When planning the transaction, trusts should also consider the lessons learned from previous transactions; see Section 8.
Domain 1: Strategy

Is there a clear strategic rationale for the transaction and does the board have the capability, capacity and experience to deliver the strategy?

<table>
<thead>
<tr>
<th>Key question</th>
<th>Good practice, green indicators of risk</th>
</tr>
</thead>
</table>
| 1. Is the trust’s overall strategy well reasoned and can the board show how the transaction supports its delivery? | The board can clearly articulate the trust’s overall strategy and show how the transaction supports its delivery.  
The board can clearly articulate the financial and clinical synergies and benefits associated with the transaction, including the impact on workforce, and has done sufficient analysis to demonstrate them.  
The board can clearly articulate the challenges faced by the trust that the transaction seeks to address.  
Where relevant, the board can clearly articulate what opportunity the transaction represents |

Key submissions:

- summary paper on rationale for transaction, including details of how the transaction supports the acquiring trust’s strategy and strategic options analysis
- analysis/work performed on identification of the synergies and benefits associated with the transaction (both financially and clinically, including the impact on workforce)
- analysis of current challenges the trusts face that the transaction seeks to address
- analysis of opportunities the transaction represents
- evidence (eg board minutes and board papers) of board challenge on the decision-making process underpinning the transaction
- evidence of engagement with key staff and stakeholders
- evidence (eg board minutes and board papers) of consideration of potential barriers to success and how these have been reflected in final plans
- details of issues raised during board and stakeholder engagement (if applicable) and how these have been resolved.
### Key question

2. **Has there been a detailed options appraisal and is there a clear rationale for the option that the trust has selected?**

**Good practice, green indicators of risk**

The board has done a detailed options appraisal covering a variety of alternatives, including the option to do nothing or a minimum.

Appraisals include financial and clinical assessments as well as impacts on patients, workforce and other stakeholders, where relevant.

The board can demonstrate how it has appraised the alternatives and chosen the option selected.

**Key submissions:**

- options appraisal, including analysis of relevant patient benefits
- evidence of the decision-making process that led to the option selected, including evidence of board challenge (e.g., board minutes and board papers) and consideration of potential barriers to success and how these have been reflected in the final plans
- summary paper on rationale for transaction

---

### Key question

3. **Does this rationale set out why it is the best option for patients, the trust and the local health economy STP plan?**

**Good practice, green indicators of risk**

The board can clearly demonstrate why the transaction is the best option for patients, the trust and the local health economy.

Plans are supported by key stakeholders in the local health economy, including the proposals within the local STP plan.

The board has engaged with patients to gain their perspective and reflected this in its plans.

**Key submissions:**

- options appraisal, including analysis of relevant patient benefits
- summary paper on rationale for transaction
5. Risk evaluation framework

- Evidence of engagement with key stakeholders in the local health economy, patients and key staff, and of views/issues raised from this engagement with having been considered and incorporated into final plans
- Assessment of the level of support for the transaction in the local health economy, in particular the level of support from CCGs and confirmation of their commissioning intentions
- Evidence (e.g., board minutes and board papers) of consideration of potential barriers to success and how they are reflected in final plans
- Evidence of continuing stakeholder engagement
- Analysis of local health economy and market.

<table>
<thead>
<tr>
<th>Key question</th>
<th>Good practice, green indicators of risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. Does the board have the capability, capacity and experience to deliver the trust's strategy?</td>
<td>The board has the necessary skills or experience to deliver its strategy, reflecting expected complexities where necessary.</td>
</tr>
</tbody>
</table>

Key submissions:

- Current governance structure for the trust(s) including the board and its sub-committees
- Proposed governance structure for the combined organisation, including the board and its sub-committees, and rationale for changes (showing, where relevant, due consideration of continuity of relations with clinicians, local authorities, voluntary bodies, etc)
- CVs and biographies of proposed board members (highlighting any relevant experience in mergers and acquisitions)
- Skills-gap analysis of the proposed board and, if needed, a plan to fill any board positions that are vacant or will be vacant post transaction
- Details of any external advice sought in respect of capability or change management.
### Domain 2: Transaction execution

Does the trust have the ability to execute the transaction successfully?

<table>
<thead>
<tr>
<th>Key question</th>
<th>Good practice, green indicators of risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Does the board have the appropriate capability and capacity to minimise execution risks?</td>
<td>The board has the necessary skills or experience to deliver the transaction.</td>
</tr>
<tr>
<td></td>
<td>The acquirer/investing organisation raises no governance concerns.</td>
</tr>
</tbody>
</table>

**Key submissions:**

- current governance structure for the trust(s) including the board and its sub-committees
- proposed governance structure for the combined organisation, including the board and its sub-committees, and rationale for changes (showing, where relevant, due consideration of continuity of relations with clinicians, local authorities, voluntary bodies, etc)
- CVs and biographies of proposed board members (highlighting any relevant experience in mergers and acquisitions, integration management)
- skills-gap analysis for enlarged proposed board and a plan to fill any necessary positions in the proposed board which are vacant or will be vacant post-transaction
- details of any external advice sought in respect of capability or change management
- details of engagement with target trust’s (or both merging parties) board and senior clinicians, including evidence of discussion/consideration of barriers to integration and attempts to resolve these
- copy of information request list sent to target trust (or both merging parties)
- details of any existing governance issues for the acquiring trust (or either of the merging parties) and action plans in place to address these within the plan
- change management strategy, eg plan to harmonise culture/behaviour
- details of additional integration arrangements, eg time-limited committees.
## 2. Is the board able to identify and quantify transaction risks appropriately? Is its approach to due diligence robust and is there evidence that key risks have been recorded?

<table>
<thead>
<tr>
<th>Key question</th>
<th>Good practice, green indicators of risk</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The board’s approach has identified all key risks and, where relevant to the nature of the transaction, has included:</td>
</tr>
<tr>
<td></td>
<td>• clinical due diligence</td>
</tr>
<tr>
<td></td>
<td>• financial due diligence</td>
</tr>
<tr>
<td></td>
<td>• legal due diligence</td>
</tr>
<tr>
<td></td>
<td>• operational due diligence, including HR, IT and estates matters</td>
</tr>
<tr>
<td></td>
<td>• commercial due diligence</td>
</tr>
<tr>
<td></td>
<td>• understanding stakeholder perspectives.</td>
</tr>
<tr>
<td></td>
<td>The board is able to articulate the key risks of the transaction.</td>
</tr>
</tbody>
</table>

### Key submissions:

- planned due diligence programme, including rationale for not carrying out certain aspects of due diligence if applicable
- all due diligence reports and summaries considered by acquiring trust board as part of the transaction
- evidence of review and challenge of the due diligence carried out and agreed action plans addressing issues identified within it
- details of engagement with target trust’s (or both merging parties’) board and senior clinicians, including evidence of discussion/consideration of barriers to integration and attempts to resolve these
- copy of information request list sent to target trust(or both merging parties)
- post-transaction integration risk management plan
- current corporate risk register for both the target trust and the acquiring trust (or both merging parties) and for transaction
- independent accountant's report and signed opinion on post-transaction integration plan (PTIP), draft then final
- board statement confirming its review and approval of the PTIP
- all board minutes and papers relevant to the proposed transaction.
<table>
<thead>
<tr>
<th>Key question</th>
<th>Good practice, green indicators of risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Has the board effectively mitigated key risks and established effective processes for the continued management of these risks post transaction?</td>
<td>The board is able to provide evidence of an effective process for managing transaction risk. Key risks of the transaction are adequately mitigated; plans are in place to ensure a reasonable downside cash position for at least the first three years post transaction.</td>
</tr>
</tbody>
</table>

**Key submissions:**

- details and quantification of downside risks
- details of major action and contingency plans to mitigate risks, including details of key mitigation enablers
- board minutes evidencing board approval of mitigations
- draft transition agreement with evidence of agreement by all parties
- post-transaction integration risk management plan
- signed statement of internal control for acquiring trust and target trust (or both merging parties), including disclosures on non-compliance
- copy of the latest integration plan monthly monitoring report to acquiring trust (or both merging parties) board
- details of any legal advice sought regarding the transaction
- independent accountant's report and signed opinion on PTIP, draft then final.
### Key question

**4. Is there a robust and comprehensive plan for delivery of the transaction, including integration and realisation of benefits?**

<table>
<thead>
<tr>
<th>Good practice, green indicators of risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>A robust and comprehensive PTIP has been developed and clearly demonstrates:</td>
</tr>
<tr>
<td>• benefits to be derived from the transaction including synergies, cost reductions, and increases in revenue</td>
</tr>
<tr>
<td>• feasibility of the proposed organisational structure and changes from the current state</td>
</tr>
<tr>
<td>• plans for achieving cultural integration</td>
</tr>
<tr>
<td>• plans to deliver any transformation, or planned service changes</td>
</tr>
<tr>
<td>• detailed plans to address any current non-achievement of national targets or core standards as well as plans to ensure ongoing compliance with national targets and core standards.</td>
</tr>
<tr>
<td>The plan has received an unqualified PTIP opinion (where relevant).</td>
</tr>
</tbody>
</table>

### Key submissions:

- plans to integrate quality governance systems (including patient experience, complaints and serious incident reporting arrangements), risk management systems, financial reporting procedures, performance management systems, IT systems, services and culture
- post-transaction integration risk management plan
- detailed post-transaction integration timeline with milestones and deadlines
- organisation chart of the proposed enlarged trust
- post-transaction management team structure/summary
- copy of the latest integration plan monthly monitoring progress/status report to the acquiring trust board (or both merging parties)
- summary of reporting arrangements for patient experience and complaints at the acquiring trust including: (1) the author and distribution of the patient experience report, (2) the names and membership of any groups that review patient experience and complaints and (3) the frequency patient experience data is reported to the board and any other applicable groups
- serious incident policy and reporting arrangements at the acquiring trust (or both merging parties) including (1) the names and membership of any groups that review serious incidents, (2) the frequency with which serious incident data is reported to the board and any other applicable groups (both internal and external to the trust)
- independent accountant's report and signed opinion on PTIP, draft then final
- board statement confirming its review and approval of the PTIP
5. Risk evaluation framework

- benefits realisation plan describing benefits (cost, revenue, patients, clinical, etc) arising from the transaction, including specific benefits by service line, timing and supporting evidence (persons responsible for capturing specific synergies should be clearly named), draft then final
- communication plan for staff and key stakeholders
- change management strategy, eg plan to harmonise culture/behaviour
- decision and rationale on physical service configuration/location.

### Key question
5. Is the integration plan sufficiently supported by clear lines of accountability, governance processes, delivery milestones and dedicated resource?

<table>
<thead>
<tr>
<th>Good practice, green indicators of risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is:</td>
</tr>
<tr>
<td>- a feasible timeline for implementation</td>
</tr>
<tr>
<td>- a means of measuring success in delivering the integration plan</td>
</tr>
<tr>
<td>- a risk management strategy for all risks considered material by the current board and qualified professional adviser(s) to the integration</td>
</tr>
<tr>
<td>- adequate capacity available</td>
</tr>
<tr>
<td>- governance processes in place to manage and implement the plan.</td>
</tr>
</tbody>
</table>

### Key submissions:
- organisation chart of the proposed enlarged trust
- detailed post-transaction timeline, with milestones and deadlines
- specifications of changes to clinical services appropriately cross-referenced with the business plan with evidence of appropriate consultation of the changes
- post-transaction management team structure/summary
- post-transaction integration risk management plan
### Risk evaluation framework

- summary of accounting-related choices or issues presented by the transaction, and of their resolution
- copy of the latest integration plan monthly monitoring progress/status report to acquiring trust board (or both merging parties)
- planned format for performance reporting for the enlarged trust
- reports (including action plans where available) from third-party inspectorates
- details of additional integration arrangements, eg time-limited committees
- proposed governance structure for the combined organisation including the board and its sub-committees and rationale for any changes.

### Key question

<table>
<thead>
<tr>
<th>6. Has the trust met all regulatory and legal requirements (including NHS Improvement certification) and is it planning the transaction with reference to good practice guidance?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good practice, green indicators of risk</td>
</tr>
<tr>
<td>Unqualified and supported certification.</td>
</tr>
<tr>
<td>Transaction is planned in accordance with good practice guidance.</td>
</tr>
<tr>
<td>Legal requirements are fully satisfied.</td>
</tr>
</tbody>
</table>

### Key submissions:

- certification and supporting board minutes and papers – see Appendices 8 to 13
- draft constitution for the post-transaction foundation trust and explanation of major changes from the previous constitution; proposals and timeline for the proposed membership and council of governor elections for the post-transaction foundation trust
- membership strategy, including steps taken to ensure representative membership for the enlarged trust
- register of proposed directors' interests
- signed board statement and memorandum on quality governance arrangements, working capital and financial reporting procedures
schedule of commissioner requested services (CRS) – with any changes to services currently provided by the trust(s) clearly indicated (changes to the provision of CRS resulting from the transaction must be undertaken in accordance with Continuity of Services Licence Condition 1). Note: Commissioners will be encouraged to review the CRS designations of services which are acquired as a result of a transaction.

### Domain 3: Quality

**Is quality maintained or improved as a result of the transaction?**

<table>
<thead>
<tr>
<th>Key question</th>
<th>Good practice, green indicators of risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Has the trust received an unqualified quality governance opinion in relation to the transaction? (where relevant)</td>
<td>Unqualified quality governance opinion.</td>
</tr>
<tr>
<td>Key submissions:</td>
<td></td>
</tr>
<tr>
<td>• independent accountant's report and signed opinions on quality governance, draft then final.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Key question</th>
<th>Good practice, green indicators of risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Has the medical director provided certification?</td>
<td>Unqualified certification provided by medical director.</td>
</tr>
<tr>
<td>Key submissions:</td>
<td></td>
</tr>
</tbody>
</table>

67 | > 5. Risk evaluation framework
• certification on the service reconfiguration by medical director, with supporting board memorandum.

<table>
<thead>
<tr>
<th>Key question</th>
<th>Good practice, green indicators of risk</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>3. What is CQC’s view of both trusts and the impact of the planned transaction?</strong></td>
<td>‘Good’ rating and no enforcement action in last 12 months for both acquiring trust and target trust (or both merging parties).</td>
</tr>
</tbody>
</table>

**Key submissions:**
- clinical due diligence report
- list of areas of non-compliance with CQC, from both acquiring trust and target trust (or both merging parties).

<table>
<thead>
<tr>
<th>Key question</th>
<th>Good practice, green indicators of risk</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>4. Would the enlarged organisation trigger any governance concerns under NHS Improvement’s Single Oversight Framework (SOF)?</strong></td>
<td>No governance concerns triggered for the enlarged trust under the SOF post transaction after any agreed investment adjustments.</td>
</tr>
</tbody>
</table>

**Key submissions:**
- copy of the applicant trust’s self-assessment on existing healthcare standards
- completed access and outcomes metrics template (provided by NHS Improvement)
- details of governance risk ratings at individual trusts with additional analysis showing the rating for the combined organisation over the period of the LTFM
- details of mitigations to identified potential breaches of targets
- signed board statement and memorandum on quality governance arrangements
- completed workforce analysis and bridging template (provided by NHS Improvement) to bridge movements in workforce in the forecast period
- latest available signed annual governance statement for each trust
- any public interest reports issued for either trust in the last 12 months
- latest available quality account
- up-to-date summary of complaints and serious incidents at acquiring trust and target trust (or both merging parties) with comparative information from previous year, including details on the number of complaints received monthly or quarterly (however reported internally) and the categories these complaints relate to (to provide in summary form – that is, whatever gets reported to management/the board)
- analysis of the complaints at both acquiring trust and target trust (or both merging parties) for previous two years
- latest available patient experience survey summary results for acquiring trust and target trust; details of how frequently surveys are performed and to whom they are reported
- quality committee reports for the six-month period
- staff survey and its most recent analysis for both trusts, with comparison to previous year and key trends.
## Domain 4: Finance

Does the transaction result in an entity that is financially viable?

<table>
<thead>
<tr>
<th>Key questions</th>
<th>Good practice, green indicators of risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Does the trust’s plan demonstrate financial viability and sustainability post transaction?*</td>
<td>Use of resources score (UoR) ≥ 4 in years 1 and 2 post transaction in the assessor case.</td>
</tr>
<tr>
<td></td>
<td>Cash position positive at end of fifth year under an assessor case.</td>
</tr>
</tbody>
</table>

**Key submisssions:**

- LTFM
- summary of cost improvement plan (CIP)
- activity analysis – if not already detailed in the LTFM
- details of major initiatives, such as cost reduction programmes, new investments or synergies from the transaction, including timeframe in which they will be achieved, key assumptions used and scenario analysis to demonstrate risks to achieving the plan
- summary of the costs expected to be incurred to complete and implement the transaction, including assumptions used to calculate them and timings of when they are to be incurred
- details and quantification of downside risks and mitigation actions
- signed heads of terms
- draft transaction agreement
- financial due diligence reports
- reconciliation of acquiring trust base case to annual planning review (APR)
- analysis of transaction funding, internal (operating cash flow) and external
- details of ongoing discussions about funding sources; confirmation from all funding parties
• completed contract templates for both acquiring trust and target trust (provided by NHS Improvement) reconciled to the LTFM
• details of Commissioning for Quality and Innovation (CQUIN) targets and year-to-date achievement for target trust including any risks to achievement for the full year
• finance committee reports (covering a six-month period)
• latest audited accounts for both trusts
• details of any outstanding contract disputes and potential financial impact (if applicable)
• detailed CIPs for outturn year and subsequent two years, and as much as is available beyond that for both trusts (including projected whole-time equivalent data) reconciled to the full business case
• reconciliation of full business case CIP to actual CIP
• latest board report on CIP achievement
• minutes of the forum where CIPs are monitored (both trusts)
• quality reviews of CIP schemes to verify they do not affect clinical quality
• summary of accounting-related choices or issues presented by the transaction and of their resolution
• integrated estates plan for the combined organisation
• analysis of asset disposal plans for the coming year
• analysis supporting activity assumptions
• completed current trading templates (provided by NHS Improvement) for both acquiring trust and target trust
• completion of historical accuracy of budgeting template (provided by NHS Improvement) for both acquiring trust and target trust
• board statement and memorandum on working capital.
* Post-investment adjustment as well as taking account of findings against strategic rationale and transaction execution criteria.
<table>
<thead>
<tr>
<th>Key question</th>
<th>Good practice, green indicators of risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Has the trust received an unqualified financial reporting procedures opinion? (where relevant)</td>
<td>Unqualified financial reporting procedures opinion (where relevant).</td>
</tr>
</tbody>
</table>

**Key submissions:**
- Independent accountant’s report and signed opinion on financial reporting procedures, draft then final.

<table>
<thead>
<tr>
<th>Key question</th>
<th>Good practice, green indicators of risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Has the trust received an unqualified working capital opinion, if relevant?</td>
<td>Unqualified working capital opinion (where relevant).</td>
</tr>
</tbody>
</table>

**Key submissions:**
- Independent accountant’s report and signed opinion on working capital, draft then final.
- Details of major action and contingency plans to mitigate risks, including details of key mitigation enablers.
- Board minutes providing evidence of board approval of mitigations.
- Post-transaction integration risk management plan.
- Signed statement of internal control for acquiring trust and target trust, including disclosures on non-compliance.
Note: The trust board’s ability to manage downside financial risk will be assessed as part of question 3 under ‘transaction execution’ review. Key question for consideration is:

Can the board articulate future mitigation plans and demonstrate the capability to deliver these plans?

Trust has demonstrated that it can maintain a sufficient cash position in a plausible downside case by year three of the plan. Trust has plans to mitigate any downturn in performance and the board has the capability and capacity to deliver these plans.
5.2. Illustrative reduced review scope

As already stated, we adapt the scope of the questions we ask to match the specific circumstances and risk profile of each transaction. For example, a capital investment project that meets our threshold for significance (for example, by increasing the trust’s gross assets by >40%) but does not involve any significant change to services (for example, re-housing of existing beds/services in a new building) will not require such a detailed review. Table 7 below illustrates the reduced scope of the questions that we might ask for such a capital investment and compares these with those asked for a significant acquisition or merger.

Table 7: Illustrative reduced review scope for capital investments

<table>
<thead>
<tr>
<th>Domain</th>
<th>Illustrative full scope (mergers and acquisitions)</th>
<th>Illustrative reduced scope (capital investment with no significant service changes)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Strategy</strong></td>
<td>Is the trust’s overall strategy well reasoned and can the board articulate how the transaction supports its delivery? Has there been a detailed options appraisal and is there a clear rationale for the option that the trust has selected? Does this rationale set out why it is the best option for patients, the trust and the local health economy STP plan? Does the board have the capability, capacity and experience to deliver the trust’s strategy?</td>
<td>Is the proposed capital investment consistent with the trust’s strategy, current local health economy dynamics and patients’ interests? Is it supported by appropriate analysis and evaluation, including consideration of alternative options?</td>
</tr>
<tr>
<td><strong>Transaction execution</strong></td>
<td>Does the board have the appropriate capability and capacity to minimise execution risks? Is the board able to identify and quantify transaction risks appropriately (including any risks associated with competition rules)? Is its approach to due diligence robust and is there evidence that key risks have been recorded? Has the board effectively mitigated key risks and established effective processes for the continued</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Has the board identified and quantified project risks appropriately, and prepared effective mitigations and contingencies for the key execution risks?</td>
<td></td>
</tr>
</tbody>
</table>
5. Risk evaluation framework

<table>
<thead>
<tr>
<th>Domain</th>
<th>Illustrative full scope (mergers and acquisitions)</th>
<th>Illustrative reduced scope (capital investment with no significant service changes)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Management of these risks post transaction?</td>
<td>Is there a robust and comprehensive plan for delivery of the transaction, including integration and realisation of other benefits? Is the integration plan sufficiently supported by clear lines of accountability, governance processes, delivery milestones and dedicated resource? Has the trust met all regulatory and legal requirements (including NHS Improvement certification) and is it planning the transaction with reference to good practice guidance?</td>
<td></td>
</tr>
<tr>
<td>Quality</td>
<td>Has the trust received a clean quality governance opinion in relation to the transaction (where relevant)? Has the medical director provided certification to NHS Improvement? What is CQC's view of both trusts and the impact of the planned transaction?</td>
<td>Would the enlarged organisation trigger any governance concerns under NHS Improvement’s SOF?</td>
</tr>
<tr>
<td>Financial</td>
<td>Does the trust's plan demonstrate financial viability post transaction? Has the trust received an unqualified financial reporting procedures (FRP) opinion? (where relevant) Has the trust received an unqualified working capital opinion? (where relevant)</td>
<td>Does the trust's plan demonstrate financial viability post transaction?</td>
</tr>
</tbody>
</table>

The detailed questions for each domain as well as examples of best practice for each area are given below to help in the development of the strategic and business cases.

As outlined in Section 3.3, the questions for each domain are rated and then these are consolidated into a single transaction risk rating. We will rate each question as green,
amber green, amber red or red depending on our view of the information provided and our discussions with the trust. Table 8 gives a guide to the expectations and requirements for the rating of each question.

Table 8: Overview of rating requirements

<table>
<thead>
<tr>
<th>Rating</th>
<th>Definition</th>
<th>Evidence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Green</td>
<td>Meets or exceeds expectations</td>
<td>Many elements of good practice and no major omissions</td>
</tr>
<tr>
<td>Amber-green</td>
<td>Partially meets expectations but confident in management’s capacity to deliver green performance within a reasonable timeframe</td>
<td>Some elements of good practice, with no major omissions and robust action plans to address perceived shortfalls Proven track record of delivery</td>
</tr>
<tr>
<td>Amber-red</td>
<td>Partially meets expectations, but with some concerns on capacity to deliver them within a reasonable timeframe</td>
<td>Some elements of good practice, with no major omissions Action plans to address shortfalls are in early stage of development Limited evidence of track record of delivery</td>
</tr>
<tr>
<td>Red</td>
<td>Does not meet expectations</td>
<td>Major omissions identified with concerns about management capacity to deliver</td>
</tr>
</tbody>
</table>
6. Mergers and acquisitions support offer

We recognise that transactions are a significant undertaking, particularly during the planning stage, and trusts may need help with their development. The level of merger and acquisition support that we offer trusts will differ from transaction to transaction: it is based on the level of risk associated with the transaction and the urgency with which we and the local system believe the transaction needs to proceed. The risk and priority are initially determined during the early engagement stage of the transaction process, before the trust starts to prepare its strategic case. Both risk and priority are then reassessed after we approve the strategic case.

Figure 11 below summarises our mergers and acquisitions support offer, which is linked to the levels of support available to trusts under the SOF as well as a view on the risk and priority of the transaction, as outlined above.
**Figure 11: NHS Improvement support available to trusts**

<table>
<thead>
<tr>
<th>Strategic case</th>
<th>Business case</th>
<th>Approvals</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Medium and high support</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Act as critical support – answer questions, offering advice and unblocking issues where required (e.g. providing competition and legal advice)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Support process to find a preferred acquirer – where a trust has identified its not sustainable and needs to find a long-term solution</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Act as first layer of assurance – review content as scoped and developed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Assist in resourcing programme – ensure the trust has sufficient resources to deliver (e.g. approvals of business cases, secondees, control totals, etc.)</td>
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<tr>
<td>- Coordination across partners – support the trust to ensure the regulatory framework (e.g. NHS England, CQC, CMA, DH, Treasury) can be navigated effectively</td>
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<tr>
<td>- Support governance – play a key role in designing governance arrangements and attending programme boards (where required)</td>
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<tr>
<td>- Set expectations – ensure parties fully understand regulatory expectations and agreeing realistic timetables (e.g. memorandum of understanding – MOU)</td>
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<tr>
<td>- Communications – support the trust to communicate and engage effectively with different stakeholders</td>
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<tr>
<td>- Disseminate good practice – ensure good practice from other transactions is shared across the NHS</td>
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<tr>
<td><strong>Support options could include:</strong></td>
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<tr>
<td>- Agreeing which parts of the strategic case are already sufficiently defined from previous work</td>
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<tr>
<td>- Drivers of deficit/sustainability reviews</td>
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<tr>
<td>- Supporting management procurement (if required)</td>
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<tr>
<td>- Facilitating workshops</td>
<td></td>
<td></td>
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<tr>
<td>- Agreeing MOU and timetable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Strategic case review</td>
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</tr>
</tbody>
</table>

| Support options could include: |
| - Clarifying NHS Improvement’s expectations |
| - Assisting with due diligence scope |
| - Ensuring the resource is approved for external consultancy support |
| - Arbitrating on misaligned assumptions |
| - Agreeing bespoke assurance scope |
| - Developing and implementing a competition strategy, including engagement with the CMA |

| **Support options could include:** |
| - Helping the trust to understand the approval and legal critical path |
| - Stakeholder management and communications support |
| - Competition and legal support |

| **Universal support (low support)** |
| - Tools and guidance |
| - Strategic case workshops |
| - Outline deliverables |
| - Stakeholder management and communications support |
| - Competition and legal comment on options |
| - Funding advice and support |
| - Ad hoc further support available as required |

| Support options could include: |
| - Business case workshops |
| - Outline business case deliverables and process |
| - Stakeholder management and communications support |
| - Competition and legal support |
| - Funding advice and support |
| - Ad hoc further support available as required |

| Support options could include: |
| - Helping the trust to understand the approval and legal critical path |
| - Stakeholder management and communications support |
| - Competition and legal support |
7. Transactions funding

Given the current financial context and distribution of transformation funds to commissioners, we do not hold any funds centrally to support transactions. Transacting parties should therefore work on the basis that any transitional support or transformation monies required to deliver the benefits of a transaction are funded through a combination of trust funds and local and national transformation funds held by commissioners. If trust funds and locally agreed funding are insufficient to support the transaction, trusts should contact their NHS Improvement regional team to discuss next steps. In most cases the case for the transaction will need to be reconsidered.

7.1. How will trusts access capital investment to support a transaction?

If the transaction business case requires capital investment from DH, then the capital thresholds/delegation limits published in the *Capital regime, investment and property business case approval guidance for NHS trusts and foundation trusts* are likely to apply. **A separate business case will be required with approvals as set out in the guidance for capital investment.**

While NHS trusts will be required to complete a separate business case to support the capital requirements, if the thresholds are met we envisage that the transaction strategic case and assurance work will result in NHS Improvement’s support in principle for the capital case. However, capital funds will only be released on the satisfactory completion of the capital outline and final business case (OBC and FBC) with detailed plans complying with the guidance set out in *HM Treasury’s Green book* and *NHS Improvement’s Capital regime, investment and property business case approval guidance for NHS trusts and foundation trusts*.

Therefore, a transaction can proceed while still awaiting HM Treasury’s approval at FBC stage, only in those cases where capital is not required to ensure the success of the transaction. In such circumstances, the sensitivities of the acquiring trust’s business case would need careful stress-testing based on a finalised capital OBC – that is, as part of the final assurance process on the transaction, to confirm that the investment risk lies with the trust. If a transaction does proceed, no obligation lies
with DH to provide funding even when the prospective funding is requested to ensure the success of the transaction.

In any instance where capital funding is deemed to be crucial to the success of the transaction, trusts should discuss these requirements, in advance, with NHS Improvement and DH to agree a timeline for the necessary steps and review stages involved to ensure the approach and timings are understood by all parties. DH will only agree to provide financial support that it considers to be affordable from the overall budget – the Departmental Expenditure Limit (DEL).
8. Lessons learned

8.1. Merger or acquisition

Review of recent organisational transactions has identified acquisition, rather than merger, as the most frequent transaction method, using section 56A of the NHS Act 2006 (amended 2012) to transfer assets and liabilities from the dissolved organisation to another. Using this method, staff transfer under Transfer of Undertakings (Protection of Employment) (TUPE) regulations and the board of the target acquired trust is no longer required.

Each transaction should be considered on its own merits; however, there are good reasons why acquisition is often the preferred method. For example, in most cases, there are clear cost and outcome advantages of an execution strategy based on acquisition. These include:

- **A proven track record of the acquiring trust.** An acquiring trust is often the larger organisation, although this is not a prerequisite for a successful transaction. The acquirer may have had experience of similar transactions or improvements and can demonstrate competence to make the required improvements in the target organisation as part of an acquisition.

- **Having an established leadership team.** Mergers are inherently higher risk than acquisitions as they require the formation of a new board from people who, whatever their individual skills, have probably not worked together before as a leadership team.

- **Quicker completion of the transaction.** For a merger, formation of a new board will take time and energy away from the other aspects of the integration.

But another option (eg merger) or another mechanism (eg a long-term management contract) may be a better strategy than acquisition. See Appendix 1 for a description of the different types of organisational transactions.

To determine what is best in each specific case, different options need to be considered at the strategic case stage and to form part of the options appraisal process.
Clarity about the technical nature of the transaction is important early in the process. Many acquisitions have been implemented as ‘mergers’ as the acquiring trust leadership has been keen to ‘retain the best of both trusts’. However, uncertainty over the make-up of the board of the new trust may be a source of confusion and stifle the necessary momentum to achieve the organisational change and realise the benefits of transaction.

8.2. CASS Business School review

In 2015 we published our review undertaken with the CASS Business School of recent transactions, identifying key learning points. We commissioned an update of this review in 2016. We have reflected what we have learned from these transactions in the revised transaction approach discussed in this guidance, primarily in the enhanced strategic case stage and the accompanying ‘red flags’. The findings from both reviews are summarised Table 9 below.

Table 9: Findings from recent transactions

<table>
<thead>
<tr>
<th>Review area</th>
<th>Findings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strategic rationale</td>
<td>Make sure the aims of the merger are well understood at the outset by all parties involved, including both financial and clinical benefits.</td>
</tr>
<tr>
<td></td>
<td>Make sure care quality benefits are articulated and funded as well as financial ones and include the investment required to increase clinical quality in a failing trust (a key reason for most NHS acquisitions).</td>
</tr>
<tr>
<td></td>
<td>Build all expected benefits into the integration plan and be very clear about the specific changes needed to realise these benefits.</td>
</tr>
<tr>
<td></td>
<td>The strategic aims of mergers should consider the strategic aims of the wider local health economy.</td>
</tr>
<tr>
<td>Pre-deal period</td>
<td>Get your own people working inside the target trust as early in the process as possible (in line with what is permissible under the competition rules). Secondment of members of the leadership team to the target (or management support agreements) have been useful in this regard. Shadowing of less senior clinical managers is also recommended.</td>
</tr>
<tr>
<td></td>
<td>Once CMA approval has been obtained there are fewer restrictions on what the trusts can and cannot do.</td>
</tr>
<tr>
<td>Due diligence</td>
<td>Ensure the due diligence process covers all compliance issues, including fire safety, equipment maintenance, adherence to minimum staffing levels and any other relevant areas.</td>
</tr>
</tbody>
</table>
| Deliver a detailed clinical due diligence process to understand the root cause behind headline figures and ‘diagnose’ key issues relevant to the specific transaction.  
Merging parties should draw on the experience of other trusts to make sure clinical due diligence is sufficiently thorough to reveal the process and issues behind waiting times and infection control data.  
Merging parties should jointly commission due diligence for all parties transparently, with the aim of securing a transaction deal that represents the best value for the local NHS health economy as a whole.  
Identify preferred providers to deliver legal and other due diligence using the NHS procurement framework to ensure good value for money.  
Use the pre-deal period to deliver more detailed due diligence to inform integration.  
Negotiations | Be disciplined in assessing transaction funding requirements as well as in spending decisions post transaction.  
Integration planning | Assess the readiness and ease of integrating each function and clinical specialty.  
Factor the likely post-deal dip in productivity into the integration plans.  
Include clinical staff in integration planning to keep plans realistic and to engage staff with the change.  
Develop comprehensive integration plans detailing the level of integration for each function and specialty, such as IT. Detailed plans should be in place for the entire integration plan, not just the first 100 days.  
Use a benefits realisation methodology to deliver post-merger integration, articulating clearly the benefits for patients of clinical integration and transformation plans.  
Make sure plans detail how non-financial benefits will be realised.  
Integration governance | Use internal staff where possible but bring in external mergers and acquisitions expertise if it is missing.  
Ensure that some of the people who develop the integration plan also implement it.  
Backfill internal staff delivering the integration plans to maintain business as usual during integration.  
Execution | Do not underestimate the difficulties of implementing change due to the human factors of change management.  
Consider the distance between sites when deciding on the levels of integration of specialties at different sites. |
| Benefits realisation | Be realistic (conservative) when planning synergies, particularly clinical synergies.  
Create dedicated teams focused on realising all benefits and rigorously performance manage these teams.  
Understand and include the cost of aligning pay and staffing levels across the two organisations in the transaction costs.  
Negotiate a realistic performance holiday of at least 12 months from both regulators and commissioners.  
A comparison of projections for both trusts with and without the merger is recommended when considering whether a merger should go ahead or not. |
| Leadership | Tap into the mergers and acquisitions experience of non-executive board members and other executives.  
Seek peer support from executives in other NHS trusts who have recent mergers and acquisitions experience.  
Ensure that the integration team and operational integration leads are adequately resourced to deliver integration, while also ensuring a strong continuing focus on business as usual.  
Consider distance between sites when planning the new organisational structure. |
| Culture | Do not underestimate the challenges of cultural harmonisation.  
Develop and carry out a consistent and comprehensive culture programme.  
Ensure that the culture programme is ‘deep’ and includes cultural learning and clarification workshops.  
Carry out cultural due diligence to understand differences in culture.  
Identify the desired cultural end-state and manage culture actively to achieve it.  
Provide the opportunity for clinicians to work with their colleagues in specialties across sites.  
Be honest from the start if it is an acquisition and not a merger of equals. |
8.3. Management support agreements and due diligence

An acquiring trust will need to undertake due diligence early during the business case stage of the transaction. Traditionally this has been commissioned from a major accountancy firm; however, insight and understanding about the target trust could be obtained in other ways that enable the acquirer to gain assurance directly and in situ (rather than through a third party) – for example, through either a management support agreement or joint appointments.

Experience from across the NHS suggests that these approaches, perhaps with some supplementary and targeted third-party assurance, offer a more comprehensive and less expensive way of understanding culture, issues and risks in the target organisation.

As explained in Sections 2.1 and 3, joint management arrangements can be subject to CMA merger review. We therefore encourage trusts to engage with our competition team at an early stage if they are contemplating a management contract or joint appointments.

Discussions between providers planning to merge are an important part of merger planning and due diligence. However, planned mergers do not always proceed, so it is sensible to have appropriate safeguards on the sharing of confidential and commercially sensitive information. Exchanging confidential and commercially sensitive information between competitors could breach competition rules if it prevents, restricts or distorts competition. In general, exchanging information which is already in the public domain or is not confidential is unlikely to raise concerns. Typically, competition risk is likely to be greater when exchanging information that is detailed (as opposed to aggregated) and current or forward looking (as opposed to historical).

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14 These safeguards need to be workable in practice but do not need to be complex. For example, if trusts have joint appointments, the safeguards should not prevent the relevant individuals having access to the information they need to perform their joint roles.
15 Section 2 of the Competition Act 1998 and Article 101(1) of the Treaty on the Functioning of the European Union.
9. Statutory procedures and timeline

A detailed discussion of the statutory steps and the roles of directors and governors is given in Appendix 1. Simplified timelines for the specific actions required in a statutory acquisition and merger are given in Tables 10 and 11 respectively.

Table 10: Actions needed to progress a statutory acquisition (section 56A)

<table>
<thead>
<tr>
<th>Party</th>
<th>Action</th>
<th>Good practice timescale</th>
</tr>
</thead>
</table>
| 1 NHS Improvement | Issue transaction risk rating  
Apply to the Secretary of State for support for the acquisition (where the parties include an NHS trust) | Within a few weeks of the board-to-board meeting |
| 2 Both trust boards | Confirm that acquisition is to proceed | Following the acquiring foundation trust's receipt of NHS Improvement's (Monitor) transaction risk rating |
| 3 Acquiring foundation trust's council of governors (and target trust's if a foundation trust) | Vote to approve the acquisition application | Following boards' confirmation of decision to proceed |
| 4 Both trusts (signed on behalf of both boards) | Make joint statutory application to NHS Improvement (Monitor) | Following governors' vote and support from the Secretary of State |
| 5 NHS Improvement (Monitor) | Grant the statutory application, provided we are satisfied that the necessary steps have been completed | Acquisition will be completed on the date stipulated in the grant document to be issued by NHS Improvement (Monitor) (completion date to be agreed with the trusts) |
| 6 Enlarged foundation trust | Take steps to populate any new constituencies created as a result of the acquisition, as per the new constitution  
Hold elections to fill any new governor posts  
Appoint any new NEDs and executive directors | Within five months of acquisition |
Table 11: Actions needed to progress a statutory merger (section 56)

<table>
<thead>
<tr>
<th>Party</th>
<th>Action</th>
<th>Good practice timescale</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Boards and governors of both trusts</td>
<td>Select interim directors from the two boards. Apply to the Secretary of State for support for the merger (where the parties include an NHS trust)</td>
</tr>
<tr>
<td>2</td>
<td>NHS Improvement (Monitor)</td>
<td>Issue a transaction risk rating</td>
</tr>
<tr>
<td>3</td>
<td>Merging trusts (both boards)</td>
<td>Confirm that merger is to proceed</td>
</tr>
<tr>
<td>4</td>
<td>Merging trusts (both councils of governors)</td>
<td>Vote to approve merger application</td>
</tr>
<tr>
<td>5</td>
<td>Merging trusts (signed on behalf of both boards)</td>
<td>Make joint statutory application to NHS Improvement (Monitor)</td>
</tr>
<tr>
<td>6</td>
<td>NHS Improvement (Monitor)</td>
<td>Grant the statutory application, provided we are satisfied that the necessary steps have been completed. Make statutory order to dissolve the two trusts and transfer assets and liabilities to the newly formed trust</td>
</tr>
<tr>
<td>7</td>
<td>New trust (interim directors)</td>
<td>Manage new trust</td>
</tr>
<tr>
<td>8</td>
<td>New trust (interim directors)</td>
<td>Hold elections for new council of governors</td>
</tr>
<tr>
<td>9</td>
<td>New trust (council of governors)</td>
<td>Appoint chair and other non-executive directors (NEDs)</td>
</tr>
<tr>
<td>10</td>
<td>New trust (NEDs)</td>
<td>Appoint chief executive with the approval of the council of governors</td>
</tr>
<tr>
<td>11</td>
<td>New trust (chair, chief executive and NEDs)</td>
<td>Appoint new executive directors</td>
</tr>
<tr>
<td>12</td>
<td>New trust (interim directors and new trust board)</td>
<td>Interim directors’ handover of management of new trust to new board</td>
</tr>
</tbody>
</table>