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NHS England

Capital investment and property business case approval guidance for NHS trusts and foundation trusts

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For advice and queries, please contact the NHS England national Capital and Cash team at: england.capitalcashqueries@nhs.net

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1. Overarching principles

1.1. NHS England recognises that for many NHS trusts and foundation trusts improving infrastructure is key to improving services. The process described in this guidance relates to the approval of capital investment and property business cases, and provides a balance between:

- allowing NHS trusts and foundation trusts the freedom to manage their own capital investment up to an agreed threshold, and
- ensuring that there is sufficient governance and assurance for the approval of capital investments, and the need to prioritise good value for money investments within the Capital Departmental Expenditure Limit (CDEL) set by HM Treasury (HMT).

1.2. This guidance is also relevant to integrated care boards (ICBs) but is not designed to set out the ICB responsibilities for capital planning or prioritisation of capital within operational capital envelopes. For more information please refer to NHS England's NHS operational planning and contracting guidance. .

1.3. Achieving sufficient assurance and governance at the same time as enabling investment to help trusts develop in a sustainable way is an extremely important strand of NHS England's work.

1.4. This guidance sets out the overarching principles relating to the:

- delegated limits for capital investment and property transactions
- capital investment and property transactions business case approval process.

1.5. This guidance clarifies the rules and requirements regarding the review and approval of capital investment and property transactions. It will help NHS trusts and foundation trusts navigate the processes involved as smoothly as possible and produce well-planned capital business cases that deliver benefits to patients.

1.6. This guidance replaces all previous guidance relating to the capital investment business case approval process published by NHS England or its predecessor organisations.

1.7 The capital investment and property business case approvals requirements described in this guidance are applicable to all NHS trusts and foundation trusts. The

specific capital delegated limits (summarised in Table 1 below) and business case approval guidelines and processes are set out in Sections 3 and 4 respectively. This updated capital guidance simplifies the business case approval thresholds. For additional guidance on whole-life cost investments please see Table 2 in Section 3.

1.8 All capital investment and property business cases that are equal to or exceed these delegated limits require NHS England and Department of Health and Social Care (DHSC) approval. Where they fall below these limits, individual trust boards can make investment decisions under their own governance arrangements, providing these investments are affordable within operational capital envelopes. A number of exceptions and alternative arrangements are in place for specific centrally funded schemes; these largely relate to capital investment as part of national programmes, as well as any transaction deemed to be novel, contentious or repercussive. For further guidance, please see HMT's publication Managing public money.

1.9 A summary of the capital delegated limits is included in Table 1, with more detail in Table 2 in Section 3.

1.10 Business case requirements for capital investments that are centrally funded through national programmes, such as Sustainability and Transformation Plan (STP) capital, diagnostics, Targeted Investment Fund, mental health, reinforced autoclaved aerated concrete (RAAC), frontline digitisation, the New Hospitals Programme, and other central allocations are also covered in this guidance. Business case and approval requirements for investments funded through these routes may have delegated limits that differ to those set out in Table 1 below, and trusts have been notified of these through either award letters or NHS England's programme leads and regional finance teams. Trusts should contact the NHS England national Capital and Cash team or their regional team if they have queries.

Table 1: Summary of Capital delegated limits

Capital investment	NHS trusts and foundation trusts in financial distress (note 1)	Foundation trusts not in financial distress (note 1)	Exceptions where approval is required irrespective of value
Capital investment and property transaction business cases (non-digital)	£25m capital cost	£50m capital cost	Centrally funded schemes, eg: • Sustainability and Transformation Plan (STP) capital • frontline digitisation capital/revenue (see below) • New Hospitals Programme (NHP) • central programme allocations, eg mental health, RAAC, Targeted Investment Fund, diagnostics, etc • bespoke operational capital allocations to cover strategic priorities. Any transaction deemed to be novel, contentious or repercussive
Digital business cases (self-funded)	£25m capital cost **or** £30m total whole-life costs	£30m total whole-life costs	
Electronic patient records (EPRs) partly or fully funded by the Frontline Digitisation Programme	All business cases partly or fully funded by the Frontline Digitisation Programme (NHS England Transformation Directorate) require approval		Where capital or revenue funding is provided by the Frontline Digitisation Programme, the business case will require approval in line with the process outlined in Table 3 below.

Note 1: Please see paragraphs 1.11 to 1.13 for the definition of financial distress in respect of capital delegated limits.

1.11 All NHS trusts and foundation trusts are subject to the capital delegated limits as set out in Table 1. NHS trusts and foundation trusts in financial distress are subject to the £25m capital delegated limit (see Table 1). Foundation trusts not in financial distress benefit from greater autonomy with higher capital delegated limits (see Table 1). For the purpose of determining applicable capital delegated limits for foundation trusts, NHS England and DHSC define a foundation trust to be in financial distress if it or the ICB to which it belongs is:

- in the Recovery Support Programme (RSP), and therefore in segment 4 of the NHS Oversight Framework and/or in breach of its provider licence. If a foundation trust is in these categories when it submits the business case to NHS England, all subsequent stages of the business case will require approval (eg OBC and FBC) even if the foundation trust/ICB moves into a different segment as the scheme progresses, or
- in receipt of DHSC revenue support from 1 April 2022 (received or planned).

See paragraphs 1.12 and 1.13 below for further information.

1.12 This guidance resets the definition of financial distress for foundation trusts. A foundation trust is not considered to be in financial distress for the application of capital delegated limits if it has not drawn revenue support since 1 April 2022, and is not in the RSP or in a ICB that is in the RSP, and is not in segment 4 of the NHS Oversight Framework and is not in breach of its provider licence; see Table 2 in Section 3.

1.13 Foundation trusts not in financial distress that merged with or acquired an NHS trust or foundation trust in financial distress will not be adversely impacted by the changes to delegated limits. That is, if a foundation trust not in financial distress merges or acquires a trust in financial distress, the merged or enlarged trust will **not** be classed as in financial distress at the point of merger/acquisition. However, if revenue support is required post transaction, the merged or enlarged trust will then fall within the definition of financial distress.

1.14 It should be noted that if DHSC financing is required for capital purposes (within operational capital envelopes), this is subject to a separate application process. Please contact your NHS England regional team or the NHS England national Capital and Cash team at england.capitalcashqueries@nhs.net.

2. Capital investment in the NHS

Background

2.1 In 2019 DHSC published the Health Infrastructure Plan (HIP), which aimed to deliver a long-term, rolling five-year programme of investment in health infrastructure, including capital to build new hospitals, modernise primary care estate, invest in new diagnostics and technology, and help eradicate critical safety issues in the NHS estate. The 2021 Spending Review provided the NHS with a three-year capital settlement covering 2022/23 to 2024/25, which will help progress the New Hospitals Programme (NHP), transform diagnostic services, enable the innovative use of digital technology, support elective recovery to address backlogs built up during the pandemic, invest in mental health and contribute to the NHS 'Net Zero' strategy.

2.2 As the NHS Long Term Plan makes clear, much of the NHS estate consists of world leading facilities that enable the NHS to deliver outstanding care for patients. However, it is clear that some of the NHS estate is old and does not meet the needs of a modern health service. There is a significant unmet demand for capital in the sector, with increasing levels of backlog maintenance. The retirement of off-balance sheet government-funded infrastructure has also removed a significant source of funding for the system.

2.3 Going forward we must ensure the NHS does not unacceptably breach the Capital Departmental Spending Limit (CDEL) set by HMT; the continuation of a planned, proactive and collaborative approach to managing capital spending across the system is necessary so that the required spend is managed in a way that is affordable within national spending constraints. In addition, we must ensure taxpayers' investment is used to maximum effect, and the NHS makes best use of capital investment and its existing assets to drive transformation.

2.4 In this context DHSC and NHS England set capital envelopes at an integrated care system (ICS) level, to enable local systems to prioritise operational capital spend within the national CDEL, set by government. This enables local systems to prioritise capital expenditure and access DHSC capital financing where this is not affordable locally. DHSC capital financing is for cash only, and where applications for financing are approved by DHSC, the financing will be provided as system capital support public dividend capital (PDC). This capital support is for trusts with operational

requirements where the expenditure is unaffordable (in cash terms) to individual organisations (see DHSC Section 42A Guidance for further details).

2.5 Trusts should also note that almost all capital expenditure, however financed (whether through self-generated resources, DHSC financing or financing borrowed from financial institutions, local government or other sources), scores against the DHSC CDEL. Capital expenditure financed by charitable funds or certain grants does not score against CDEL if the receipt of the donation/grant and the capital expenditure fall within the same financial year.

2.6 Capital investment and property business cases will be approved as quickly as possible to allow critical investment in the NHS to benefit patients, but this will need to be delivered within the context of the above. The business case requirements and expectations are set out in Sections 3 and 4.

General capital planning principles

2.7 Trusts are required to draw up capital investment plans and associated capital cash management plans in line with local investment priorities, agreed strategic plans and affordability constraints, and are required to agree these locally with ICS/ICB partners. Each ICS/integrated care board (ICB) and its partner trusts will need to agree an annual system capital plan, which will require all partners to be involved in capital planning and decision-making; see NHS England capital planning guidance (NHS operational planning and contracting guidance). NHS England will work with trusts and systems on the following areas:

- review of the deliverability and local affordability of the trust and system capital plans
- testing of trust capital cash management plans to ensure the trust can finance them
- testing that capital investment plans have been completed in accordance with the guidance set out in this document, the planning framework for the year being considered and any further national guidance issued by DHSC or HMT
- review of the affordability of the trust's operational capital plans against the national CDEL set by HMT and within capital envelopes set at ICS/ICB level
- review of requests for capital financing made to DHSC.

3. Capital investment and property transactions

Delegated limits for capital investment and property transactions

3.1 HMT and DHSC have confirmed the delegated limits for capital investment and property transactions. Delegated limits will apply to NHS trusts and foundation trusts. For the purposes of this guidance, capital is generally property, plant and equipment investments or disposals. This guidance does not cover transactions covered by the NHS England subsidiaries guidance, mergers and acquisitions or equity transactions, which are covered in the NHS England transactions guidance.

3.2 Foundation trusts in financial distress (as defined in paragraphs 1.11 to 1.13 for the purposes of capital delegated limits) will have the same delegated limits as NHS trusts. Foundation trusts not in financial distress will have more flexibility and freedom, and the new delegated limits set out in Tables 1 and 2 will replace the previous thresholds set out in the NHS England transactions guidance for capital investment and property transactions. This means that capital investment and property business case approvals guidance for all sectors and segments are covered by this document. A foundation trust is deemed to be in financial distress for the purposes of capital delegated limits if any of the conditions listed in paragraphs 1.11 to 1.13 apply.

3.3 Delegated limits apply to all capital investment and property transactions business cases including those for property, plant or equipment, disposals, IT/digital investment, leased property, plant or equipment, managed equipment, managed services and energy service performance contract schemes. The delegated limits and their application are set out in Table 2. For capital builds, refurbishment, upgrades or disposals, the delegated limits apply to either the capital costs or gross disposal proceeds. For whole-life cost business cases, the delegated limits apply to:

- non-digital capital schemes – the capital cost only, excluding VAT
- self-financed digital capital schemes – the capital cost and/or the whole-life cost, excluding VAT

- centrally funded digital schemes – all business cases partly or fully funded by the Frontline Digitisation Programme (NHS England Transformation Directorate) require approval.

3.4 NHS England and DHSC are responsible for approving business cases with capital values equal to or over agreed delegated limits; see Tables 1 and 2.

3.5 The delegated limits and details on the review threshold are set out in Table 2.

Table 2: Capital delegated limits (Note 1)

Description	Delegated limit	How is the review threshold measured?	
Capital investment and property transactions – Non-digital			
NHS trusts and foundation trusts in financial distress	£25m capital cost	Capital expenditure including irrecoverable VAT	
Foundation trusts not in financial distress	£50m capital cost		
Capital investment – Digital – self-funded capital investment (see below for the Frontline Digitisation Programme)			
NHS trusts and foundation trusts in financial distress	£25m capital cost **or** £30m total whole-life cost	Capital investment, eg IT infrastructure	Capital expenditure including irrecoverable VAT
Foundation trusts not in financial distress	£30m capital cost **or** £30m total whole-life cost	Whole-life cost investment (see Table 4)	NHS trusts/foundation trusts in financial distress – the capital element of the whole-life cost excluding VAT is £25m or greater, or the total whole-life cost is £30m or greater excluding VAT Foundation trusts not in financial distress – £30m capital cost or total whole-life costs of £30m or greater excluding VAT
Capital investment – Electronic patient records (EPRs) partly or fully funded by the Frontline Digitisation Programme (NHS England Transformation Directorate)			
NHS trusts and foundation trusts in financial distress	All business cases partly or fully funded by the Frontline Digitisation Programme require approval	Where total capital and revenue funding is provided by the Frontline Digitisation Programme, the business case will require approval in line with the process outlined in Table 3 below.	
Foundation trusts not in financial distress			

Note 1: Centrally funded schemes and any transaction deemed to be novel, contentious or repercussive may be subject to lower delegated limits and business case approval requirements. Trusts should contact their NHS England regional team for confirmation. See Table 3 on approvals.

3.6 Where a scheme may be considered novel, contentious or repercussive by HMT, trusts are required to consult NHS England, which may, in consultation with DHSC, decide that the case requires approval. The decision on whether an investment is so considered and the resulting approval requirements will be determined by NHS England and DHSC on a case-by-case basis. Irrespective of delegated limits, all capital investment schemes or property transactions that are deemed novel, contentious or repercussive, or to have novel, contentious or repercussive financing arrangements, will require NHS England, DHSC and HMT approval. For further guidance, please see HMT's Managing public money.

3.7 Please note, for centrally funded capital investment, trusts will have been notified by either a funding award letter or NHS England's regional team or programme team of the business case approval process that applies to the scheme. Trusts should contact their NHS England regional team if they require clarification.

3.8 With the exception of centrally funded capital investment schemes, all trusts have delegated authority to approve capital investment business cases below the delegated limits as set out in Table 2. Where schemes are funded either partially or fully through the operational capital envelopes, the capital investment must be affordable within operational capital envelopes; see NHS operational planning and contracting guidance. Trust's should exercise caution where investments are close to delegated limits, and ensure that adequate contingency and optimism bias allowances are included in costs. Where costs subsequently exceed delegated limits, trusts should contact the NHS England national Capital and Cash team to discuss approval requirements.

3.9 NHS England expects trusts to apply robust governance and assurance processes in the approval of business cases below delegated limits, with a trust reviewing these under its own governance arrangements. NHS England anticipates that business cases below delegated limits and subject to internal trust approval processes, should be produced by following best practice and using HMT's The Green Book guidance regarding the five case model, as well as the trust's own governance policies and procedures.

3.10 All capital business cases with investment or transaction values above delegated limits (see Tables 1 and 2) should be subject to appropriate governance processes, including approval from the trust board, before being submitted to NHS England. NHS England anticipates that the required approvals in this guidance build on the good governance processes already in place in NHS trusts and foundation trusts,

and that most of the documentation NHS England and DHSC require to approve investment decisions should already be available in organisations.

3.11 NHS England and DHSC have a joint committee approval process in place that is designed to ensure there is one approval point for NHS England and DHSC, rather than sequential points, and therefore improve the timeliness of DHSC/NHS England approvals. Table 3 summarises the approvals required according to the investment or property transaction value.

Table 3: Approvals

Financial value of the capital investment or property transaction (Note 1)	Approving committee	HMT approval
Capital investment and property transactions – Non-digital		
£25m or greater but less than £50m	NHS England and DHSC Joint Investment Sub-Committee (JISC)	Not required
£50m or greater	NHS England and DHSC Joint Investment Committee (JIC)	Required
Capital investment– Digital – self-funded capital investment (see below for the Frontline Digitisation Programme)		
£25m capital cost or £30m whole-life cost but less than £50m	NHS England and DHSC JISC	Not required
£50m capital cost or £50m whole-life cost	NHS England and DHSC JIC	Required
Capital investment – Electronic patient records (EPRs) partly or fully funded by the Frontline Digitisation Programme (notes 1–3)		
Central frontline digitisation capital and revenue funding of less than £50m	NHS England Transformation Directorate – EPR Investment Board (EPRIB)	Not required
Central frontline digitisation capital and revenue funding of £50m or greater	NHS England Transformation Directorate – EPRIB, and NHS England and DHSC JIC	Not required (note 4)

Note 1 To deliver the NHS Long Term Plan digital commitment, an EPR Investment Board for centrally funded EPR business cases has been set up to accelerate approvals.

Note 2 Central funding relates to Transformation Directorate funding only, and excludes operational capital support PDC or other programme PDC.

Note 3 Where a EPR case is wholly revenue and central funding is £50m or greater, JIC approval is required. See Table 3.

Note 4 Full delegation has been given to JIC, except where novel, contentious or repercussive.

3.12 NHS England and DHSC will approve capital investment and property transaction business cases up to a threshold of £50m. Any capital business cases with an investment value of £50m or greater are also subject to HMT approval, except for EPRs funded the central frontline digitisation capital. As noted above, to deliver the

NHS Long Term Plan digital commitment, an EPR Investment Board has been set up to accelerate approvals.

3.13 For capital projects that require NHS England and DHSC approval (except where early funding has been provided by DHSC), foundation trusts in financial distress and all NHS trusts should not incur expenditure, other than essential fees, on capital schemes until the full business case (FBC) has been approved, unless specific agreement has been reached beforehand with NHS England's national Capital and Cash team and DHSC. Until such approval is received, all costs are incurred at the trust's own risk and a secured source of funding and CDEL cover must be identified by the trust to cover this expenditure. Any such expenditure should be managed within ICS/ICB capital envelopes, except where funding and CDEL have been explicitly approved by DHSC. NHS trusts should not assume any additional capital resource limit cover for such costs and should contact the NHS England national Capital and Cash team with any queries.

3.14 Where the accounting treatment of a capital investment is deemed novel, contentious or repercussive or subject to professional judgement, it is likely that the trust will be required to obtain written confirmation of the acceptance of the proposed accounting treatment from its external auditors and to submit this confirmation as supporting evidence to NHS England alongside the formal business case.

3.15 All trusts are asked to note that NHS England can lower at its discretion the delegated limits (as set out in Tables 1 and 2) if any of the following apply:

- business cases are considered to be novel, contentious or repercussive
- trusts are in the highest risk categories of distress based on segmentation analysis
- business cases are artificially split into multiple cases to circumvent delegated limits.

3.16 Where lower delegated limits are applied, trusts should notify the relevant regional director and regional finance team of all business cases between the agreed lower delegated limit and the original limit that are likely to require NHS England approval. The need for approval will be confirmed by the relevant NHS England regional director. The relevant regional director will have discretion to approve the business case without it going through further levels of approval.

NHS national capital

3.17 A number of significant national programmes for capital investment are to be delivered over the period 2022/23 to 2024/25, including the Targeted Investment Fund (TIF) for elective recovery, diagnostics, mental health and RAAC. There is a standard approach to the assurance and approval of capital investment under these programmes. National programme teams will discuss the scope of the investments with trusts to ensure that the process is proportionate to the requirements of the programmes. For digital cases, individual organisations that receive central funding will be required to follow the appropriate digital business case approvals process. ICBs and trusts should speak to their regional teams before developing a business case for digital investment to ensure the correct processes are followed.

3.18 For the national programmes specified in the NHS England planning guidance, the expectations are:

- for schemes below £5m, a programme of works and financial information will be required for approval by national programme teams
- for schemes between £5m and less than £25m, a single short form business case will be required for approval by national programme teams
- for schemes between £25m and less than £50m, both an outline business case (OBC) and a full business case (FBC) in line with HMT Green Book requirements will be required for approval by NHS England and DHSC
- for schemes that are £50m and above, both an OBC and a FBC in line with HMT Green Book requirements will be required for approval by NHS England, DHSC and HMT.

3.19 NHS England will advise trusts of the business case requirements for nationally funded schemes, but they should contact their regional team for further guidance. Standard templates for a programme of works and short-form business cases are available from NHS England's Capital and Cash Team england.capitalcashqueries@nhs.net.

Whole-life cost schemes

3.20 For whole-life cost schemes such as self-funded or centrally funded digital contracts, leased equipment, leased property, managed equipment, managed service and energy service performance contract schemes, the delegated limits set out in Tables 1 and 2 apply as follows:

- non-digital – the delegated limit applies to the capital element only, excluding VAT
- self-funded digital – the delegated limit applies to the capital element and/or the whole-life cost, excluding VAT
- centrally funded digital – all business cases partly or fully funded by the Frontline Digitisation Programme (NHS England Transformation Directorate) require approval.

3.21 Where the delegated limits set out in Tables 1 and 2 are exceeded, schemes will require DHSC and NHS England approval.

3.22 For any whole-life cost scheme, business cases should include confirmation of the accounting treatment and trusts should, in conjunction with their ICS/ICB, ensure that there is sufficient CDEL cover within operational capital envelopes before entering into any such arrangements, where this impacts on operational capital allocations. Please refer to the NHS operational planning and contracting guidance.

3.23 Please note that schemes that involve private finance are not permitted, in line with the change in central government policy on private finance.

3.24 Please see Table 4 below for further details on whole cost schemes, delegated limits and how the review threshold is measured.

3.25 Whole-life cost investments that are wholly revenue in nature are not covered by this guidance, except for EPR cases that are wholly revenue and receiving central frontline digitisation funding. Trusts should refer to the transactions guidance for revenue-only transactions.

3.26 The whole-life cost is the total cost and is not discounted. Whole-life costs do not include capital charges or depreciation, cash-releasing benefits, non-cash-releasing benefits and the cost of non-IM&T staff who may use the systems. The avoided cost of the existing IM&T systems should also not be included. VAT is excluded from whole-life cost for approval purposes.

3.27 Table 5 below lists elements included and excluded from whole-life costs calculations. The lists are not exhaustive but can guide those tasked with preparing and reviewing business cases.

Table 4: Whole-life cost schemes

Description	Delegated limit	How is the review threshold measured?
Whole-life cost investments – Non-digital		
NHS trusts and foundation trusts in financial distress	£25m	The capital element of the whole-life cost excluding VAT; see Table 5 For example, leased equipment, leased property, managed equipment, managed service and energy service performance contracts
Foundation trusts not in financial distress	£50m	
Whole-life cost investments – Digital self-funded only		
NHS trusts and foundation trusts in financial distress	£25m capital **or** £30m whole-life cost	The capital element of the whole-life cost excluding VAT is £25m or greater **or** The total whole-life cost is £30m or greater excluding VAT
Foundation trusts not in financial distress	£30m whole-life cost	Total whole-life costs of £30m or greater excluding VAT; see Table 5.
Capital investment – Electronic patient records (EPRs) partly or fully funded by the Frontline Digitisation Programme (NHS England Transformation Directorate)		
NHS trusts and foundation trusts in financial distress	The approval value is the total capital and revenue funding from the Frontline Digitisation Programme	
Foundation trusts not in financial distress		

Table 5: Whole-life cost calculations

Included in whole-life costs	Excluded from whole-life cost calculations for delegated limits and approval values
Capital costs Life-cycle costs where these are contractually committed, as part of the investment decision Running costs (including loan interest) Project management costs Training costs Redundancy costs Optimism bias Contingency	Capital charges Depreciation Cash-releasing benefits and non-cash-releasing benefits Cost of non-IM&T staff who may use the systems Cost avoided of the existing IM&T systems VAT

Leases

3.28 IFRS 16 on leases was implemented from 1 April 2022. For further guidance please refer to NHS England's Financial accounting updates – International Financial Reporting Standard 16 leases implementation.

3.29 New leases and lease amendments within the scope of IFRS 16 will now score against capital budgets and providers will need to seek business case approval should business cases including lease expenditure exceed the delegated limits as set out in Table 4 above.

3.30 For leases of property, plant and equipment and buildings, it is the capital element of the whole-life cost payable under the contract (excluding VAT) that is compared to the delegated limit. Any required enabling capital expenditure, eg alterations to premises to accommodate the equipment or, in the case of property, to make them suitable for the occupier's use should be included when considering the delegated limit.

3.31 The relevant term over which to calculate the whole-life cost is the contractual term. In the case of property, any break points that are exercisable only by the occupier should be ignored for these purposes, as should any statutory right of renewal. Whole-life costs are the total cost of the project over the life of the contract (typically 7–10 years); including capital costs, running costs, IM&T costs, project management costs and training costs.

3.32 For all leases, the business cases should include confirmation of the accounting treatment and trusts should, in conjunction with their ICS, ensure that there is sufficient CDEL cover within ICS operational capital envelopes before entering into any such arrangements, according to the most recent planning guidance (NHS operational planning and contracting guidance) and the NHS England IFRS 16 leases implementation guidance.

3.33 Business cases submitted for approval must include the details of the lease arrangement from the lessee's perspective, but also the details of the lessor (and whether internal or external to the DHSC group). Where internal to the group, details of the lessor's accounting treatments must be provided, for DHSC to understand group-level budgetary implications.

3.34 If the proposed lease arrangement is with an external lessor, confirmation as to whether any internal leasing alternatives are available and why these have been discounted is required, as the group-level budgetary implications of external leasing may be less favourable than an equivalent lease with an intra-group lessor.

3.35 For lease acquisitions or disposals, trusts should refer to Health Building Note (HBN) 00-08 The efficient management of healthcare estates and facilities.

4. Capital investment and property transactions business case approval process

4.1 NHS England will require assurance that the trust proposing the investment has subjected its capital investment business case to an appropriate level of scrutiny and governance, before the case can be submitted to NHS England. As part of the approval process NHS England will ask trusts to demonstrate that the business case complies with HMT's The Green Book requirements and the five case model. The business case checklist (Annex 1) is a tool for trusts to use as they develop their business case.

4.2 NHS England and DHSC have developed a set of fundamental criteria to help assess whether a business case is sufficiently robust to enter into the detailed business case review process. The fundamental criteria are included in Annex 1 and can be selected using the relevant drop-down menus, according to business case stage. They do not provide an exhaustive list of requirements, but instead act as a review gateway that helps ensure a business case is fit for purpose to enter the assurance process. Trusts, with the support of NHS England regional teams, should work on delivering these requirements from the inception of a scheme, to ensure that these requirements are met before a business case is submitted.

4.3 We strongly recommend that trusts complete the business case checklist (Annex 1) and submit this alongside their business case. This aims to improve the quality of business cases and the efficiency of the approval process by minimising review queries. The checklist includes a Project Data Sheet, which aims to collect key data and metrics. We recommend Trusts complete this, and NHSE would welcome feedback on the format and content of this sheet, and opportunities for benchmarking. As a minimum, the fundamental criteria element of the checklist must be completed and submitted with the business case.

Development of business cases using the five case model

4.4 All preparers and reviewers of a business case should follow the HMT Green Book and accompanying guidance.

4.5 For digital business cases a bespoke Comprehensive Investment Appraisal (CIA) model is being developed. Trusts should contact their regional finance or digital lead for access.

4.6 This guidance provides an overview of the HMT guidance on business case development investment proposals based on the five case model. HMT's guidance sets out more detail on how to develop a strategic outline case (SOC), outline business case (OBC) and full business case (FBC). There is a step-by-step guide and a summary of review criteria, and the evidence required to comply with the five case model is identified.

4.7 For major spending proposals, there are three key stages in the development of a project business case. They correspond to the key decision points in the spending approval process, which are set out below. These are the SOC, OBC and FBC. HMT's standard five case model should be followed at each key stage in the development of business cases. This model comprises the following five dimensions:

- strategic
- economic
- commercial
- financial
- management.

4.8 For centrally funded business cases and national programmes, trusts should refer to their approval letter, which sets out the business case requirements, or contact their NHS England regional team.

4.9 In seeking approval for a SOC, OBC and FBC, trusts should be aware of the purpose of each stage and the permitted steps in the progression of the scheme:

- **SOC:** to establish the case for change and provide a preferred way forward for approval, prior to going into the more detailed planning stage.
- **OBC:** to identify the investment option that optimises value for money, prepare the scheme for procurement, and put in place the necessary funding and management arrangements for the successful delivery of the scheme. Trusts are not permitted to commence procurement ahead of OBC approval. Any costs incurred ahead of approval are at the trust's own risk.
- **FBC:** to identify the market place opportunity that offers optimum value for money, set out the commercial and contractual arrangements for the negotiated deal,

confirm the deal is affordable, and put in place detailed management arrangements for the successful delivery, monitoring and evaluation of the scheme. This includes documenting the outcomes of the procurement. Trusts should ensure that, unless in exceptional circumstances, the expiry date of any target cost/guaranteed maximum price (GMP) or equivalent allows sufficient time for the business case review and approval process to conclude.

4.10 The costing for capital spending proposals should include all equipment and works necessary for the scheme to proceed, including enabling works. OB and FB forms are available but please note that cost forms are currently being updated.

4.11 The NHS England business case checklist (Annex 1) was developed in collaboration with DHSC, and is for use by both NHS trust and foundation trust project teams and NHS England in reviewing and providing assurance on capital investment and property transaction business cases.

4.12 Project teams should treat the checklist as a combination of guidance on material that must be included in a business case and advice on various issues. The checklist represents the recommended minimum content of a business case. HMT's The Green Book and related five case model guidance should be used to produce a complete business case. We strongly recommend that trusts complete the business case checklist (Annex 1) and submit this alongside their business case. This aims to improve the quality of business cases and the efficiency of the approval process by minimising review queries. As a minimum, the fundamental criteria elements included in Annex 1 must be completed and submitted with the business case.

Business case economic and financial appraisals

4.13 To assist with business case preparation, further guidance on the differences between the economic and financial appraisal is included below. For more complete guidance, please refer to HM Green Book and accompanying guidance.

4.14 Economic appraisals undertaken as part of business case production have a wider perspective and focus on value for money, whereas financial appraisals focus on funding and affordability. The key differences are summarised in Table 6. Further details are include in HM Green Book and accompanying guidance.

Table 6: Comparison of economic and financial appraisal

Economic appraisal	Financial appraisal
Focus: Net present social value (NPSV)/ benefit cost ratio (BCR)	Focus: Funding and affordability
Analysis: • real (relative base year) prices • includes avoided costs • includes opportunity cost • includes all quantifiable costs, benefits and risks to both organisation and wider society (cash and non-cash-releasing) • includes lifecycle costs • includes environmental costs • excludes all Exchequer 'transfer' payments, eg VAT and income from other public sector bodies • excludes general inflation • excludes sunk costs, depreciation and capital charges • excludes redundancy costs • excludes loan interest	Analysis: • current (nominal) prices • benefits – cash-releasing only • includes capital and revenue costs • includes transfer payments • includes irrecoverable VAT • includes specific inflation • includes depreciation • includes capital charges • includes redundancy costs

VAT in business cases

4.15 The treatment of VAT in business cases is shown in Table 7 below. It is important to note that for sign-off values, the treatment of VAT depends on the type of business case and whether the economic or financial case is being considered.

4.16 As part of the formulation of the business case, we recommend that the trust seeks written advice from its VAT advisers as to whether VAT is recoverable or non-recoverable, and submits this as supporting evidence to NHS England alongside formal submission of the business case.

Table 7: VAT in business cases

Value description	VAT on capital costs	VAT on revenue costs
Business case approval value (non whole-life cost cases)	Include irrecoverable VAT Include VAT if there is any risk to recovery	Not relevant to approval value
Business case approval value with whole-life costs	Exclude	Exclude
Economic case appraisal (net present social value) All cases	Exclude	Exclude
Financial case All cases	Include irrecoverable VAT	Include irrecoverable VAT

Approval process and business case documentation

4.17 Trusts should send business cases requiring NHS England approval to the relevant regional director and/or regional teams in the first instance. The business case key documentation is summarised in Table 8.

4.18 We strongly recommend that trusts complete the business case checklist (Annex 1) and submit this alongside their business case. As a minimum, the fundamental criteria included in Annex 1 must be completed and submitted with the business case. Business cases must meet the fundamental criteria included in Annex 1 before submission.

4.19 For centrally funded capital investment or national programmes, trusts should refer to the funding letter/notification from DHSC, NHS England or its predecessor organisations for confirmation of the business case approval requirements as these may differ from those set out in Table 8.

4.20 For any potentially novel, contentious or repercussive cases, we recommend that trusts complete the business case checklist (Annex 1) as it applies to their transaction and they should contact their NHS England regional team for advice. Further details of the approval process and documentation requirements are given below.

Table 8: Business case key stage approval and documentation

Trust classification	Value of the capital investment or property transaction (Note 1–7)	Type of business case	SOC	OBC	FBC	Business case checklist (Annex 1)	Fund-amental criteria checklist (Annex 1)	Project data sheet (Annex 1) (Note 8)
			Approval requirements					
NHS trusts and foundation trusts in financial distress	£25m or greater but less than £30m	Non-digital	No	Yes	Yes	We strongly recommend that a completed business case checklist is submitted with the business case	Yes	Recommended
		Digital (self-funded)	No	Yes	Yes		Yes (Digital)	Not applicable
All trusts (subject to the delegated limits in tables 1 & 2)	£30m or greater	Non-digital	Yes	Yes	Yes		Yes	Recommended
		Digital (self-funded)	Yes	Yes	Yes		Yes (Digital)	Not applicable
All trusts	£50m or greater	Non-digital	Yes	Yes	Yes		Yes	Recommended
		Digital (self-funded)	Yes	Yes	Yes		Yes (Digital)	Not applicable
All trusts	Novel and contentious business cases	All	Yes	Yes	Yes		Yes	Recommended

Note 1 For centrally funded capital investment and national programmes, trusts should refer to their approval letter, which sets out the business case requirements, or contact their NHS England regional team.

Note 2 For whole-life cost business cases, see Table 4.

Note 3 To assist the business case development, review and approval process, we recommend that trusts submit a completed business case checklist (Annex 1).

Note 4 The fundamental criteria in Annex 1 must be competed and included as part of the business case submission.

Note 5 Foundation trusts not in financial distress will require approval for a self-funded digital investment with a capital cost or whole-life cost of £30m or more. Trusts with such plans should contact NHS England to discuss the proposed investment and review requirements.

Note 6 Trusts with digital schemes for EPR replacement that are either partly or fully funded from frontline digitisation capital funding (NHS England Transformation Directorate) should seek confirmation of the requirements applicable to their scheme from the Frontline Digitisation Programme.

Note 7 While there is no requirement for SOC approvals for self-funded digital cases below £30m, any trust planning to implement a new EPR funded or partly funded by the Frontline Digitisation Programme should liaise with its regional digital lead to discuss the readiness support review process and requirements, which replace the SOC.

Note 8 The Project Data Sheet aims to capture key project data and metrics. We recommend that this is completed by Trusts and NHSE would welcome feedback on format and content of this element and opportunities for benchmarking.

4.21 The values in Table 8 apply to capital investment and property transaction business cases, including asset disposal business cases and whole-life cost business cases. Note that NHS England will not accept a combined OBC and FBC unless this is specifically confirmed in an approval letter or by central NHS England programme leads. Otherwise, where combined cases are received, the trust will be asked to prepare separate business cases.

4.22 All trusts that have digital cases, funded or partly funded by the Frontline Digitisation Programme, should contact their NHS England regional digital lead to discuss the proposal and agree the review and approval requirements.

4.23 Foundation trusts not in financial distress (as defined in paragraphs 1.11 to 1.13) will require approval for a self-funded digital investment with a £30m capital cost or £30m whole-life cost. Trusts with such plans should contact NHS England to discuss the proposed investment and review requirements.

4.24 The primary expectations for key stage documents are summarised in the following guidance and these areas will be tested in the DHSC and NHS England review of the business case:

- Business case checklist – Annex 1
- HMT's The Green Book and accompanying guidance
- HMT's guide to developing the project business case
- HMT's guide to developing the programme business case
- HMT's CIA model user guide.

4.25 The NHS England business case checklist in Annex 1 is for both trust project teams and NHS England to use in reviewing and providing assurance on capital investment and property transaction business cases. Project teams should treat the checklist as a combination of guidance and advice on the material that should be included in a business case. It does not replace the HMT Green Book requirements. The checklist represents recommended guidance for the development of business cases and for the business cases to enter into the national business case review process.

4.26 The NHS England Capital Business Case Technical Support and Training Unit offers technical support and training to NHS bodies in developing capital investment business cases. NHS England is an accredited training organisation for Better Business Cases™ training. The unit also offers wider complementary training packages in related technical areas (CIA model training, benefits management and realisation workshop, economic appraisal training and financial appraisal training) to

meet the development needs of NHS England colleagues and NHS colleagues in NHS trusts and foundation trusts, ICSs/ICBs and other arm's length bodies. The capital business case training packages are NHS focused, using examples to support NHS capital business case development. These respond to the specific requirements of individual capital investment programmes and projects across all healthcare sectors, and are delivered online.

Guidance on letters of support for capital business cases

4.27 NHS England requires letters of support to be submitted for all SOCs, OBCs and FBCs that require NHS England and DHSC approval. Annex 3 to this guidance provides details of who the letters need to come from and what they should include.

Joint business cases

4.28 Where two or more schemes have similar timelines and strategic rationales, and it makes sense to batch them to achieve best value for money due to economies of scale, we recommend that the business case approval process should not be circumvented by progressing schemes individually. These cases should be discussed with the relevant regional director and/or regional team before proceeding.

Consortium investments

4.29 If a consortium of trusts is making an investment, the delegated limits of the consortium members are not cumulative: where the total scheme value goes above the delegated limit for any single NHS trust or foundation trust in financial distress in the consortium, it will require NHS England and DHSC approval.

4.30 For other members of the consortium, if the value of the scheme also exceeds their delegated limit, it will require NHS England approval. If the scheme is below a trust's delegated limit, the investment should be dealt with under the trust's internal governance processes. For any consortium investments greater than £50m (or £30m for digital investment cases), the consortium should contact NHS England to establish whether DHSC and HMT involvement in the approval of the scheme will be required.

4.31 Trusts working collaboratively, but entering into separate contracts, do not constitute a consortium investment and their individual delegated limits apply to their own procurement.

Technical support and training

4.32 The NHS England Capital Business Case Technical Support and Training Unit can be contacted for a prospectus, enrolment form and bookings via the central email addresses below.

- Better Business Cases™ courses: england.buscasetechsuppunit@nhs.net
- bespoke courses: england.cbctstubespoke@nhs.net

Table 9: Capital business case technical support

Capital business case technical support and training programme	Key element
Better Business Cases™ training	Foundation masterclass and APMG examination Practitioner masterclass and APMG examination
Wider business case training	CIA model training Benefits management and realisation workshop Economic appraisal training Financial appraisal training
Technical support	Ad-hoc support as required

Implementation of Cabinet Office spend controls

4.33 Cabinet Office spend controls are now being implemented across the NHS via a phased regional approach over two years. This started in October 2022 and the latest information can be found on FutureNHS. For capital business cases in scope of the new Cabinet Office spend controls, NHS England is working with the Cabinet Office to understand how these can work with existing governance.

Gateway reviews

4.34 In line with the Infrastructure and Projects Authority (IPA) guidance, programmes and projects within the DHSC capital delivery portfolio are required to go through assurance at key stages of their lifecycle. For further details, please refer to the IPA guidance.

4.35 Projects will have existing assurance activities in place, including internal reviews and approval processes for each business case stage.

4.36 To complement existing business case approval processes, DHSC is enrolling eligible schemes onto the IPA's gateway review 1–5 process. This examines programmes and projects at key decision points in their lifecycle to provide guidance to the senior responsible office and assurance for NHS England, DHSC and HMT that they can progress successfully to the next stage and are essential to the approval of funding. Gateway assurance reviews are external peer reviews and a critical element for the successful delivery of a project or programme.

4.37 IPA has delegated the co-ordination of gateway reviews for individual projects and programmes to DHSC. The DHSC Capital Delivery PMO working with the Major Projects Portfolio team will enrol schemes and support them through the process. Please contact abisayo.agbenla-rahman@dhsc.gov.uk for further information.

Service change or reconfigurations and public consultation

4.38 Ahead of submitting any business case to NHS England, trusts should ensure they have met any public consultation requirements. Where trusts and commissioners are considering service change or reconfigurations as part of local health system proposals, they should follow NHS England's guidance Planning, assuring and delivering service change for patients.

4.39 This guidance includes a 2022 addendum to the March 2018 guidance, which updates guidance to better align service reconfiguration and capital business cases, and evaluation criteria where appropriate, and reflects NHS England's more integrated assurance processes.

4.40 Service change schemes can save time during the subsequent capital approval process by aligning the service change pre-consultation business case (PCBC) and capital SOC. Both the PCBC and SOC are technical documents, designed to enable decision-maker(s) to determine a preferred way forward. The PCBC enables decision-makers to decide whether the programme can go to public consultation, and the SOC is the first step in the capital approval process. The addendum to the planning, assuring and delivering service change for patients sets out the requirements for a PCBC and how they align with SOC requirements.

Timetable for capital investment and property transaction business cases

4.41 For business cases of £25m or greater, NHS England and DHSC work on an indicative 12-week approval cycle once NHS England has assessed that the

business case meets the fundamental criteria. A more streamlined process is in place for investments of less than £25m that are financed by DHSC through central programmes. Further details are set out in allocation letters and are available from NHS England regional teams. The review period will include time for the NHS England and DHSC's review, feedback and clarification, and depends on trusts providing satisfactory responses.

4.42 The indicative 12-week cycle is based on business cases with a financial value below £50m. If a business case has a financial value over £50m, additional time will need to be added to a trust's timetable to secure Ministerial submission and HMT approval. The additional indicative timeframe is six weeks post Joint Investment Committee approval, although this may be extended, eg in periods of parliamentary recess and spending reviews.

4.43 For EPR business cases, the Frontline Digitisation Programme within the NHS England Transformation Directorate is responsible for review and approval and will work with trusts to accelerate the approvals process with shorter review timescales. The business case checklist (Annex 1) includes digital fundamental criteria and tailored digital requirements.

4.44 The timetable is reliant on the quality of business cases being satisfactory for NHS England and DHSC's review and on trusts supplying adequate responses within reasonable timescales. Where this is not the case, NHS England and DHSC reserve the right to pause the business case review process until the trust supplies satisfactory responses. In these cases, trusts need to be aware that the review process will be extended. In addition, if external advice is required to support the business case review and assurance process, the review period may be extended. Business cases must meet the fundamental criteria requirements before the detailed review can commence. We recommend that trusts complete the business case checklist (Annex 1) as a self-assessment tool, and submit this with their business case.

Disposals

4.45 A trust will need to submit a business case to NHS England where gross disposal proceeds are above its delegated limits. The trust may be able to reinvest the proceeds subject to business case approval from NHS England and DHSC, and to the CDEL being affordable. There is new flexibility to use CDEL credits over multiple years. Trusts should refer to the 2023/24 capital guidance update. As a minimum, the disposal and retention business case will need to give an indication of what the

retained receipts will be used for, eg reinvested in healthcare buildings/infrastructure, and confirmation that the CDEL impact can be managed within ICS/ICB capital envelopes. It should also be in line with the local ICS/ICB estate strategy.

4.46 The levels of authorisation for these business cases are in line with those set out in Tables 1 and 2 above.

4.47 NHS organisations are obliged to enter details of the property onto the e-PIMs/InSite register to enable other public sector organisations to come forward to purchase the land and/or property. In addition, trusts should refer to the guidance on disposals in Health Building Note (HBN) 00-08: The efficient management of healthcare estates and facilities.

4.48 Once land and/or property has been identified as surplus to a particular trust's need, it should:

- check what legal interest it holds and whether the property is registered in its name on the land registry
- check whether property is required to be returned to the Secretary of State for Health and Social Care where it was part of a Transfer Order carried out as part of the NHS reforms of 1 April 2013
- circulate details to nearby NHS organisations, NHS Property Services and local authorities, and register details of the land and/or buildings on e-PIMS/InSite. This notification should allow six weeks to two months for a purchaser to emerge before placing the property on the open market. Registering disposals on the e-PIMS register is a requirement for disposals of any value; see Health Building Note (HBN) 00-08: The efficient management of healthcare estates and facilities.

4.49 Once the trust is satisfied that there is no public sector requirement for the land and/or property, marketing of the land and/or property can commence. Trusts should also ensure that the planned disposal is not impacted by Crichel Down rules. It is important that NHS organisations appoint appropriate professionals to advise on the best options for disposal through full and open marketing, including whether securing planning consent adds value/increases market opportunity. This evidence should be included in the business case. An OBC approval is required before formal marketing can commence.

4.50 Registering disposals on the e-PIMs/InSite register is a requirement for disposals of any value. In addition, for the trust's own governance purposes, all disposals are expected to be fully supported by a business case. A cost–benefit analysis of the

disposal options should inform the business case. Business cases over the trust's delegated limit will require approval from NHS England and DHSC at all stages.

4.51 The trust should obtain written professional advice on the most appropriate method and timing of revaluations, to ensure that the business case can demonstrate compliance with relevant accounting standards and the DHSC group accounting manual (GAM). A recent district valuer (or equivalent RICS registered valuer) valuation should be included as evidence of the expected disposal receipt. Where disposals have a phased draw down, the impact of phased capital receipts (and any conditionality) should be identified in the business case. This written advice should be submitted as supporting evidence to NHS England alongside the FBC.

4.52 Valuations for the purpose of direct reinvestment in the estate should be RICS 'Red Book' valuations undertaken no more than six months prior to submitting the OBC or FBC. Where disposal programmes proceed over several years, valuations should be based on the RICS Red Book valuation, which can be updated through addendum/refresh of the valuation to reduce professional fees.

4.53 The disposal of an asset into a special purpose vehicle needs to comply with NHS England's guidance. Please see Section 5 of this guidance and the NHS England webpage Assuring and supporting complex change.

4.54 Confirmation of the special purpose vehicle status should be included in the OBC and FBC as supporting evidence. The valuation of a property asset should be a RICS Red Book valuation.

4.55 Trusts are not permitted to go to market or exchange contracts ahead of OBC approval. Completion is only permitted once FBC approval is obtained. Trusts should therefore factor the approval process into their disposal programme and negotiations with a purchaser.

4.56 For CDEL purposes, the net book value of the asset being disposed of is treated as a CDEL credit. Trusts should refer to the DHSC GAM for guidance on the accounting treatment, classification and valuation. In addition, further guidance is provided in the NHS operational planning and contracting guidance.

Overage or claw back provisions

4.57 Where the sale price may not reflect the potential increase in value during development, the inclusion of overage or claw back provisions in the sale documentation should be considered. These provisions reserve to the vendor the

right to further payments if certain circumstances occur – effectively a ‘share’ in any future increase in value of the site. Professional advice should be taken on overage and claw back options throughout the disposal process, to ensure that they are relevant and appropriate for the transaction.

4.58 Further guidance is included in Health Building Note (HBN) 00-08: The efficient management of healthcare estates and facilities.

External financing and delegated limits

4.59 Capital expenditure financed from an external source, such as DHSC financing, donations, grants and commercial loans, should be included in the approval value of a scheme when deciding if a business case needs approval. For example:

- an NHS trust/foundation trust in financial distress has a delegated limit of £25m
- it is developing a business case for a £28m project
- this project is being funded by a £8m charitable donation and £20m from the trust’s own internal resources.

4.60 In this case, the trust will still require business case approval from NHS England as the overall capital investment of £28m is above the trust’s delegated limit.

DHSC capital investment financing applications

4.61 Where a trust’s capital investment requires DHSC financing, the trust will need to assess the priority and affordability of the scheme within the ICS/ICB capital envelopes. If the urgency of the investment is confirmed and cash is not available locally to fund the investment, a financing application can be made to NHS England. NHS England will review the application and, when validated, will present the case to DHSC on behalf of the trust. The application will require consideration by DHSC as part of the national CDEL budgetary position before it can be approved. Trusts should therefore not commit or spend against the scheme concerned until approval for the financing has been confirmed.

4.62 The Secretary of State’s Guidance under section 42A of the National Health Service Act 2006 (updated January 2023) sets out the approval rules for financing from outside the DHSC group. Capital investment financed externally consumes capital resource and will therefore score against the ICS/ICB capital envelope in the normal way.

4.63 Where a trust's capital business case is above the trust's delegated approval limit and requires DHSC capital financing (in cash terms), the trust should contact its NHS England regional finance team or the NHS England national Capital and Cash team to discuss the financing requirements ahead of business case development or submission. These teams will advise the trust on the availability of DHSC finance and the appropriate application process.

4.64 Trusts should not commit spend against schemes reliant on DHSC financing until financing has been approved and the trust has been notified of this approval. Any expenditure incurred by the trust ahead of financing approval is at the trust's own risk and should be matched by an identified alternative source of funding and CDEL cover. NHS trusts should ensure they have capital resource limit cover for any such expenditure before it is incurred.

Financing from outside the DHSC group

4.65 Foundation trusts in distress and NHS trusts may borrow from private sector sources or other governmental bodies/departments only if the transaction delivers better value for money than financing through DHSC. Foundation trusts in distress and NHS trusts must seek prior approval from DHSC via NHS England. Similarly, DHSC may also provide guarantees to trusts' borrowing. Please refer to the Secretary of State's Guidance under section 42A of the National Health Service Act 2006 (updated January 2023).

4.66 However, in all these cases, because non-government lenders are likely to face higher costs, it is unlikely that there will be a value for money case for borrowing outside the DHSC group. Interest rates applied by DHSC can be found on the National Loan Fund website. Capital investment financed externally consumes capital resource and will therefore score against ICS/ICB capital envelopes in the normal way.

4.67 External borrowing arrangements that are deemed novel, contentious or repercussive will require HMT approval.

4.68 Further guidance can be found in the Secretary of State's Guidance under section 42A of the National Health Service Act 2006 (updated January 2023). This guidance consolidates and builds on existing guidance on capital investment issued by DHSC and was developed in line with the principles set out in HMT's Managing public money.

Post business case approval

4.69 Trusts will receive formal written confirmation of approval by NHS England and DHSC at all stages of the approval process; that is, at SOC, OBC and FBC stages. The letter will set out the approval granted along with any conditions of approval, including key actions required by the trust either before or during the next stage in the approval process, or as part of the implementation of the business case.

4.70 In an environment where trusts are experiencing inflationary pressures on capital schemes, they may find it more difficult to obtain a GMP or equivalent, as their contractor may not be prepared to fix for a sufficient period of time to enable the FBC to proceed through the business case governance and approval process. Where this is the case, trusts may need to complete their FBC on the basis of an interim GMP or equivalent. If this is the case, a full breakdown must be provided in the FBC to demonstrate which costs within the GMP or equivalent remain subject to change and how these have been allowed for in the cost and financial contingency estimates, to allow DHSC and NHS England to form a view on the risk. The trust will be expected to confirm a source of funding should the final costs exceed the interim GMP or equivalent.

4.71 For digital business cases funded by the Frontline Digitisation Programme, trusts should contact their regional digital lead where costs exceed either contract values or the amount approved in the FBC. Contractual prices could increase where elements of the contract did not provide a fixed price or unforeseen additional costs materialise, eg an increase in a trust's internal cost such as implementation resources.

4.72 In the event that the final costs exceed the amount approved in the FBC, NHS England and DHSC must be informed immediately and the trust will be required to submit further information to NHS England and DHSC to seek authority to proceed to contract signature.

4.73 This update should include a description of the reasons for the increase in costs and a full breakdown of the various elements of the contract confirming where costs have increased since FBC stage. The trust should provide any advice from cost advisers appointed to review the contract costings and works packages (although seeking this should not delay submission to NHS England and DHSC). In addition the trust should provide an update on the impact of the increase in costs on the trust's financial statements, in particular how the CDEL profile is affected, and confirmation of the source of funding for the increase in costs. If the increase in costs is funded from

trust internal sources, an updated letter from the ICB will be required to confirm affordability within the system capital allocation in the years impacted.

4.74 In circumstances where the value of the scheme is forecast to be 10% or more than the value approved in the previous stage of the approval process (that is, FBC value more than OBC value), the trust will be required to submit a report detailing the reasons for the cost increase (or describing the reasons for the cost increase in the FBC), its governance arrangements in respect of the scheme, and measures it is taking to minimise costs and ensure that future schemes do not experience similar cost overruns.

Post-project evaluation

4.75 To enable shared learning and for good governance, a best practice requirement is that trusts complete post-project evaluations. This is a standard NHS England approval condition. These should identify whether the overall objectives and benefits identified in the original business case have been delivered and highlight any areas of improvement that can be applied to future investments. Annex 2 provides a pro forma that trusts can use to complete the post-project evaluation exercise. This should be a two-stage process with the first stage being an initial review within six months of business case approval, and the second stage a further review two years after commissioning a new service and/or facility.

5. Subsidiary transactions

5.1 Any trust considering entering into a joint venture, special purpose vehicle, strategic estates partnership, subsidiary or other partnership is subject to the assurance and approval process set out in this NHS England guidance for trusts. In addition, any material change to an existing arrangement is also subject to this assurance and approvals process. Please see the NHS England webpage Assuring and supporting complex change, which provides links to guidance on:

- statutory transactions, eg mergers, acquisitions, dissolutions, separations and transfer schemes
- forming or changing a subsidiary
- certain significant service contracts, eg material contracts that could present material risk
- certain financing arrangements, eg arrangements that are novel, contentious or repercussive
- commercial transfers, eg material sale and purchase agreements or novation agreements
- service reconfiguration, ie for those considering substantial service change.

5.2 When considering capital transactions, via a joint venture, special purpose vehicle, strategic estates partnership, subsidiary or other partnership, trusts need to consider the most appropriate model for asset ownership to protect the condition and availability of assets. Trusts should contact NHS England to discuss their proposals at the earliest opportunity. Trusts should also consider the relevant guidance set out in Annex 1 to this guidance.

5.3 All subsidiary transactions, including joint ventures, special purpose vehicles and subsidiaries (regardless of size, legal structure or purpose) are ‘reportable’ to NHS England and may need to be reviewed and risk rated. All subsidiary transactions therefore require a trust-approved business case detailing the nature of the proposals and the plan’s inherent risks to be submitted. NHS trusts can only enter into subsidiary transactions under very limited circumstances.

6. Private finance

6.1 The government announced that it will no longer use PF2, the current model for private finance initiatives (PFIs). Existing PFI and PF2 contracts will remain but any proposals to use new private finance or extend existing private finance should be discussed with NHS England at the earliest opportunity.

6.2 Any proposals for termination or variation to existing PFI arrangements should be discussed with NHS England at the earliest opportunity via the national Estates and Facilities team. The existing change control process applies to NHS trusts and, in addition, NHS England is further developing arrangements to review variations that alter contract terms or change risk profile. Any proposals to terminate PFI contracts by whatever cause must be reviewed by NHS England and will require DHSC approval.

6.3 Trusts should continue to refer to the DHSC group finance manual and relevant accounting standards. IFRIC 12 describes the accounting treatment for operators of public to private service concession arrangements. These arrangements are forms of public private partnerships and include PFI and NHS local improvement finance trust (LIFT).

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