

Delivering High Quality Care for Patients

The Accountability Framework for NHS Trust Boards



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Foreword

The onset of the new financial year creates a new environment in which we all work, and with it come new opportunities to build upon the success of recent years, enhancing the care we provide for the patients and communities who rely on us being there for them when they need care.

The environment is challenging: the new national and regional architecture will doubtless take some time to bed in, the financial constraints in which we operate will continue for the foreseeable future at least, and the expectations that patients and the public have of the services the NHS provides continue to grow.

How we collectively approach those challenges will determine how successful we are in achieving what should be the ambition of each and every one of us: to deliver high quality, sustainable services for our patients.

Delivering High Quality Care for Patients: The Accountability Framework for NHS Trust Boards, sets out a clear set of rules under which we should all operate, underpinned by clear principles which should guide our judgement, both on the day-to-day decisions we take as well as the long-term strategic ambitions we drive forward.

Running health services – whether that is providing mental health care or managing a hospital – has never been

easy, and the level of scrutiny now applied to NHS leadership in delivering these essential services is unparalleled in my experience. My ambition is to lead a supportive organisation that works closely with every NHS Trust in the future, understanding the unique challenges they face and helping to create the environment in which they can succeed.

The framework is designed to support NHS Trust Boards to have real clarity about how the NHS Trust Development Authority will work with them on every aspect of their business – how Boards will be held to account, what kind of support they can expect from the NHS TDA and, ultimately, how they can cement their success in improving the quality of care they provide by achieving Foundation Trust status.

The relationship between the NHS TDA and senior leaders from each NHS Trust will be critical to creating the environment for success, and the behaviours and interactions which underpin that relationship should be mutually respectful, supportive and, where necessary, challenging, to ensure we are all doing everything we can to improve the quality of care patients receive.

David Flory
Chief Executive



Introduction

2013 marks a watershed moment for the NHS.

The long-planned reforms to our system are now in place; the publication of the report into the serious failings at Mid-Staffordshire NHS Foundation Trust has rightly brought both the quality of care the NHS provides and the accountability for its delivery into a sharper focus than ever before; and the constrained financial environment in which we operate gets tougher as we enter into the business end of delivering quality and productivity improvement plans.

How each and every NHS Trust Board responds to the challenges the new environment poses will be critical to their ability to deliver high quality services for their patients and communities – not just for the year ahead but also for the medium and long term.

Creating the conditions for success – defining what that looks like, ensuring each organisation can draw on the necessary support to deliver their ambitions, and having clarity on the accountability for delivering it – will be essential to supporting NHS Trust Boards to meet that challenge.

In December last year, with the support and input of leaders from across the NHS Trust sector, the NHS TDA published

Toward High Quality, Sustainable Services – planning guidance for NHS Trust Boards for 2013/14, which set out the expectations on what needed to be delivered both in the current financial year and in the medium to long term.

This new document, *Delivering High Quality Care for Patients: The Accountability Framework for NHS Trust Boards*, describes how those expectations will be delivered, setting out how the NHS TDA will work with NHS Trusts on a day-to-day basis, how we will assess the progress NHS Trusts are making and how we will provide the development support each organisation needs to meet the challenges that lie ahead.

Our ambition remains a simple one: to create the environment that enables NHS Trust Boards to deliver high quality and sustainable services for the patients they serve.

Achieving high quality care – putting care, compassion and a real focus on delivering what patients need as well as creating the systems and structures to make sure it can be delivered over the long term – will ensure communities are well served by the local NHS for a generation to come and will, ultimately, deliver the government's stated aim of achieving an all Foundation Trust provider sector in the future.

Understanding the Accountability Framework

The responsibilities of the NHS TDA are much broader than simply providing a framework for NHS Trusts to prepare to become Foundation Trusts in the future. Our remit is much more ambitious and is nothing less than to provide a regime that enables NHS Trust Boards to have a real focus on the quality of care they provide through everything they do.

As well as overseeing all aspects of a Trust Board's performance on delivering high quality care – starting with assessing and agreeing their overall plan through to monitoring their progress on delivery on a day-to-day basis – we will also have the powers to support them to become sustainable organisations, including approving transactions and significant capital investments involving NHS Trusts. Ensuring the right leadership is in place to take every NHS Trust Board forward is another critical responsibility of the NHS TDA, enabled by our ability to make chair and non-executive appointments to NHS Trust Boards. Each aspect of these responsibilities is explained in detail in the different chapters of this Framework: planning, oversight, escalation, development and approvals.

Planning

The beginning of the process is having a clear and unambiguous plan for the year ahead that is also the basis for the medium and long-term ambitions of each NHS Trust Board. Our commitment is to ensure that **planning guidance** for the year ahead is always delivered in a timely manner to enable NHS Trust Boards as much time as possible to plan how they will deliver improvements in the year ahead.

Oversight

We aspire to being an organisation that is close to each and every NHS Trust Board, working with them to understand how they are progressing, helping them to assess the impact their performance is having on the quality of care patients receive, and, where necessary, intervening when things don't go well. Our **oversight model** sets out how that day-to-day relationship will work.

Escalation

There can be a whole set of reasons why an NHS Trust might not deliver the standards they have set themselves through their plan, and our first commitment will always be to provide the necessary support to help them improve. However, as the national organisation accountable for the performance of all NHS Trusts, we will

always be mindful that if the support we provide doesn't translate into improved services for patients there may be a need to intervene. Our **escalation model** provides a clear understanding of what we will need to do when NHS Trust Boards fail to deliver on the ambitions they have set themselves.

Development

One of the most powerful aspects of having, for the first time, a national organisation providing leadership and oversight for all NHS Trusts, is the leverage that model gives us to better support NHS Trust Boards to overcome some of the more challenging problems they face. Whether that's bringing together Trusts from across the country to work on common issues of concern, or using what we know about where NHS Trust Boards need further development to enlist support from national organisations such as the new NHS Improving Quality, the NHS Leadership Academy or external bodies. The **development model** describes how this will work in the future.

Approvals

Becoming a Foundation Trust can, and should, only occur when an NHS Trust Board can clearly demonstrate that they are able to provide high quality care for patients and have the right business plan in place to ensure they can continue to deliver well into the future.

Being approved to apply for Foundation Trust status will only occur when this is achieved. Our **approvals model** sets out how the NHS TDA will support NHS Trusts to develop strong FT applications and approve them to move forward for assessment by Monitor. It also explains how other key changes – such as proposed transactions, capital schemes and significant service changes – will be assured in the future.

No single one of these five key areas is more important than the other: each offers an important building block toward supporting NHS Trust Boards to deliver sustainably high quality for the patients and communities they serve.

The policies and processes set out in this document seek to take account of the vital lessons of the Mid Staffordshire Public Inquiry, particularly the importance of oversight systems focussing first and foremost on the quality of care, and the need for the FT assessment process to put quality first. The recent government response to the Inquiry's final report set out important changes to the broader system for overseeing healthcare providers, including the creation of a new Chief Inspector of Hospitals and a single failure regime for providers. The NHS TDA will work with partner organisations to adapt its processes as needed in the coming months in light of these changes.



The principles that underpin our approach

In *Toward High Quality, Sustainable Services* we set out how the success of the NHS TDA is intrinsically linked with the success of each and every one of the NHS Trusts we oversee.

Only by working together effectively can we deliver against the aspiration to achieve high quality, sustainable services in every part of the NHS.

We've worked closely with leaders from every NHS Trust to develop our approach over the last 12 months, and from that work we've drawn some important principles which guide our approach to every part of the Accountability Framework.

Every interaction we undertake has an impact on the quality of care patients receive

Over the coming months and years, the interactions between NHS Trust Boards and the NHS TDA will be many and varied, ranging from supporting organisations to reduce healthcare associated infections through to approving major capital developments for NHS Trusts.

Our philosophy is that everything we do should be able to be traced directly back to improving the approach NHS Trusts take to enhancing the quality of care they provide for the patients and communities they serve.

One model, one approach

As the first national organisation to provide oversight and support to NHS Trusts, we have the ability, for the very first time, to have a clear set of processes and behaviours that are consistent right across every interaction we undertake with each NHS Trust.

We've worked hard to ensure that, in establishing the model which underpins the way in which the NHS TDA does its business, it can be applied consistently right across everything we do.

Each NHS Trust can expect to find the NHS TDA both proportionate and consistent in its interactions with the service – our approach will always be risk based, and where we need to apply our judgement it will be consistent and fair, whilst recognising that no two organisations we work with are the same.

The principles that underpin our approach

Clear local accountability for delivery

While the NHS TDA is accountable to the Department of Health for the overall performance of NHS Trusts, the accountability for delivering a high quality, safe and sustainable service for the patients and communities they serve sits with the NHS Trust Board.

In executing that accountability we expect NHS Trust Boards to be aspirational and ambitious for their patients – striving to deliver the best care, underpinned by clear governance and a strong business plan.

In return, the NHS TDA will support NHS Trusts to overcome any difficulties they have and provide the national framework for them to succeed and deliver their aspirations.

Openness and transparency

Throughout the process of establishing the NHS TDA we have been clear that we want to be an open and transparent organisation: sharing information and data to help NHS Trusts improve and develop so that they can offer the best care to the patients and communities they serve.

Our commitment is to disclose issues promptly and candidly, and to have a transparent method of risk assessment that is accessible and understood by all parties. Sharing such information will

enable organisations to have a better view of the risks they face and the opportunities available to improve the way they run their organisation.

Making better care as easy to achieve as possible

Helping NHS Trusts to improve and push on and become Foundation Trusts isn't something the NHS TDA can do alone. Local commissioners, NHS England, the Care Quality Commission, Monitor, Health Education England and others will all impact on the success of NHS Trust Boards in the future.

We want to make sure that, wherever possible, we are working with other national bodies to create the conditions where duplication – whether that be in terms of sharing data and information or the processes that underpin oversight – is avoided. We won't always get it right, but working together with NHS Trusts and other partners, we will strive to ensure that when duplication occurs, we aim to simplify systems and processes to reduce unnecessary bureaucracy, allowing NHS Trust Boards to focus on what's important: delivering better quality care for their patients.

Working supportively and respectfully

The relationship between the NHS TDA and every NHS Trust Board will be critical to achieving our aim of delivering high quality, sustainable care to every community in the future.

Our primary objective is to support NHS Trust Boards to deliver their ambitions – ensuring they have the right aspirations for their communities, underpinned by a strong business plan to take that approach forward.

We know that the challenges that face some NHS Trust Boards are greater than others, and we will work hard to provide or source the necessary support to enable them to improve, and each interaction we have with an NHS Trust Board will be designed to help it deliver better care, whether that's providing improvement support or holding that organisation to account for what it has promised to deliver.

In turn, the commitment we need from every Trust Board is to work with us respectfully and openly to enable the right relationships to develop between our two organisations to help ensure that improvements in the quality of care can take place.

An integrated approach to business

There are a myriad of potential interactions that can take place between an NHS Trust and the NHS TDA: whether that is a team on the ground supporting clinicians to enhance the care they provide, a Delivery and Development Director working with a Chief Executive to overcome a particular issue, our information team working

with data analysts in a NHS Trust to enhance the quality of information a Trust Board looks at, or our Clinical Quality Directorate supporting front-line clinicians to improve the quality of care they provide.

We've worked hard in designing our approach to working with NHS Trusts to ensure that, wherever possible, we're having a single conversation with every organisation.

Our local Delivery and Development teams – which include clinical and quality expertise, finance and business support and communications staff – are designed to ensure that, wherever possible, we're not only providing you with the right support, but that we're having a single, joined-up conversation with your organisation. We're also using technology to ensure that our nationally-based staff are tied into those conversations.

Understanding the environment

The NHS TDA begins its work with NHS Trusts at a time of significant change and upheaval for the NHS.

The changes to the NHS landscape brought about by the 2012 Health and Social Care Act are just coming into place, with much still to be determined about how the new system will work.

The vital learning from the Mid Staffordshire Public Inquiry must be absorbed and acted on by everyone in the health system, and in responding to the report into what happened at Mid Staffordshire, the Government has outlined plans for a new Chief Inspector of Hospitals which will have a further impact on the environment for NHS Trusts.

There are two important consequences from this context. First, that our work must, from the outset, put the quality of services for patients at its heart and begin to respond to the important recommendations of the Mid Staffordshire Inquiry. Secondly, we must be prepared to adapt and change as we take on board all of the learning from the Inquiry and as broader oversight systems are developed.

The NHS TDA has been clear throughout our year-long journey of establishment that supporting NHS Trusts to deliver high quality, sustainable services will be our core purpose.

In line with the recommendations of the Mid Staffordshire Inquiry, our approach to developing and assuring Foundation Trust applications will focus on the quality of services at every stage, aiming to ensure that only organisations that are able to provide sustainable, high quality care for patients will move forward for consideration by Monitor, with a similar approach being central to assuring proposed transactions, capital investments, and service changes.

Through all of the processes described in this framework, we will work closely with partner organisations to ensure that our approach to quality oversight is aligned with the broader system. Our **oversight model** aligns with the regimes of the CQC and commissioners, our **development model** brings parties from across the system together to support improvement by NHS Trusts, and our **approvals model** will take clear account of the views of other organisations, in particular the CQC.

The NHS TDA will also play an active role in the new Quality Surveillance Groups and the broader architecture for collective quality oversight which is being put in place following guidance from the National Quality Board.

However, we know there will always be the opportunity to do even more to ensure that we continuously review that we're doing everything we can to focus on the quality of care patients experience, taking full account of the lessons of the Mid Staffordshire Inquiry.

More broadly, the development of the new regime for the Chief Inspector of Hospitals will mean we will need to adapt our own role and work ever more closely with the CQC and other partners as we move forward.

While the context in which we operate over the coming months and years will draw a sharper focus on the quality of care that NHS Trusts provide and the experiences patients have when they use their local services, the need for strong local leadership, ambition to modernise services, and behaviours which engage both clinicians and patients alike around decisions about how services are delivered, remains as important today as it has been through all the improvements the NHS has achieved over the last decade.

The structure that underpins the NHS TDA and the framework we've designed to give national oversight and support for NHS Trusts going forward provides the right platform for each and every Trust Board to be able to succeed.

However, it will be the leadership, ambition and behaviours displayed by each individual Trust Board in how they work with the NHS TDA through this accountability framework and how they respond to the changed environment that will determine how successful they will be in the future.

The oversight model

The oversight model describes how we are going to work with NHS Trusts on a day-to-day basis, creating a clear and unambiguous framework which describes what success looks like and what expectations we have of NHS Trusts to deliver for the patients and communities they serve.

The model describes how, in future, NHS Trusts can expect to be assessed by the NHS TDA, how they can expect to be held to account for what they have promised to deliver, and what indicators will be used to determine whether we believe an organisation is delivering high quality care.

The oversight model sits at the heart of *Delivering High Quality Care for Patients: The Accountability Framework for NHS Trust Boards*, and has a clear focus on quality, delivery and sustainability.

In executing our duty of holding organisations to account for the delivery of the ambitions they have described in their annual plan, we will always be proportionate and consistent, open and transparent, and respectful and supportive, in line with the principles set out in this framework.

The metrics we will measure against will give us a clear understanding of how well an organisation is delivering, the strength of the governance arrangements that sit beneath their approach and the rigour they apply to delivering a sustainable business plan.

Taken together, these measures will also give us a clear indication of the health of each organisation, its approach to delivering a culture where quality and safety are prominent, and the behaviours it displays to its staff, patients and the wider community it serves.

Our oversight model is designed to align as closely as possible with the broader requirements NHS Trusts will need to meet from commissioners and regulators. The access metrics replicate the requirements of the NHS Constitution, while the outcomes metrics are aligned with the NHS Outcomes Framework and the mandate to the NHS Commissioning Board, with some adjustments to ensure measures are relevant to provider organisations. The framework also reflects the requirements of the Care Quality Commission and the conditions within the Monitor licence – those on pricing, competition and integration – which NHS Trusts are required to meet. Finally, the structure of the oversight model

The oversight model (continued)

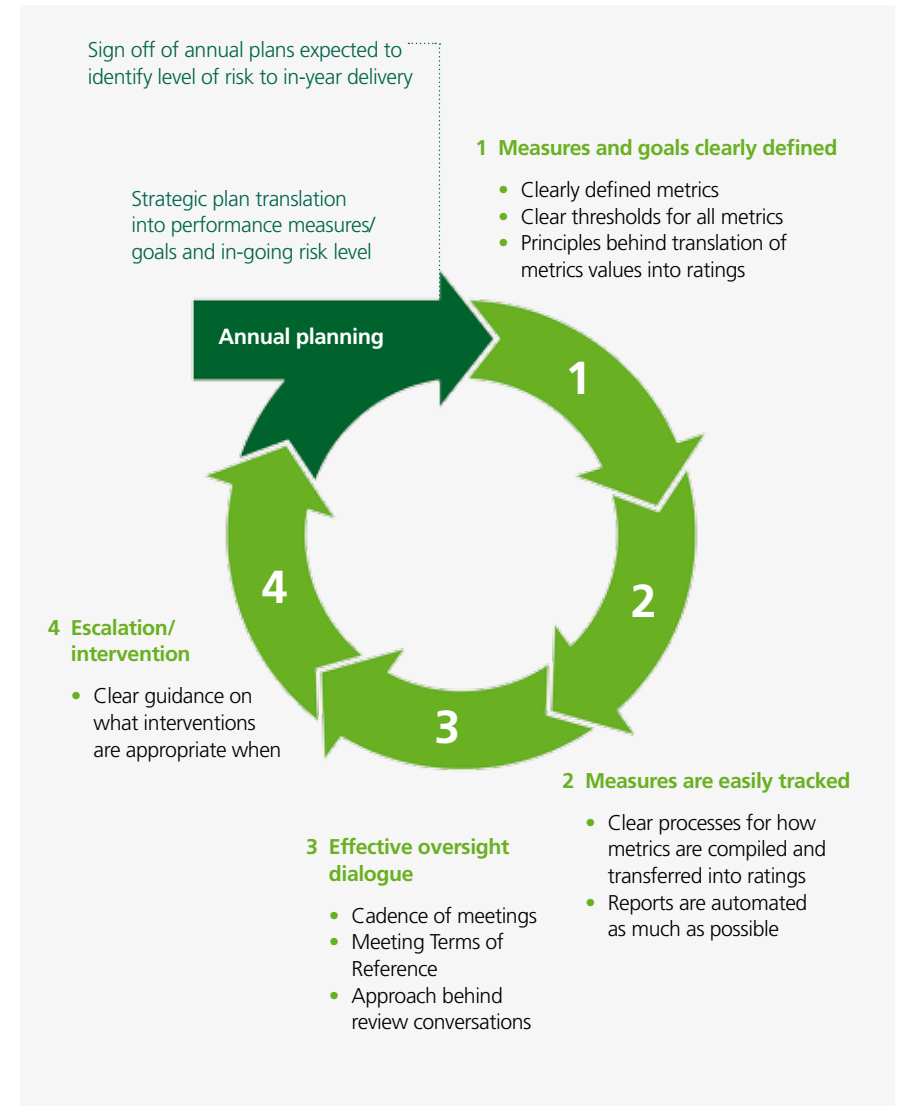
reflects Monitor's proposed new Risk Assessment Framework and as part of oversight we will calculate shadow Monitor risk ratings for NHS Trusts. In this way the NHS TDA is seeking to align its approach wherever possible with that of other organisations and to prepare NHS Trusts for the Foundation Trust environment.

Our core objectives in delivering our oversight arrangements are to ensure that all NHS Trusts in England:

- provide safe, high quality care, that ensures a positive experience for patients;
- achieve agreed measures of financial performance; and
- make progress towards a sustainable organisational form, either as a stand-alone Foundation Trust or as part of another organisation.

The oversight process is part of an annual cycle, which is illustrated overleaf.

Diagram 1 Planning and Oversight Cycle



The oversight model (continued)

Oversight begins with the NHS TDA's planning guidance that sets priorities for delivery in the coming year. The NHS TDA will sign off operating plans at the start of each financial year, and in doing so will assess that NHS Trusts are being ambitious in their plans for providing high quality care for their patients and communities and will also assess the level of risk to delivery. These will be key factors in determining the nature and frequency of the interactions the NHS TDA will have with Trusts from the start of the year.

Every month, the NHS TDA will monitor in-year delivery against plans and against key indicators including quality, governance and finance, as well as progress towards a sustainable organisational form.

How NHS Trusts are progressing against their plans will determine what kind of relationship they can expect to have with the NHS TDA. Where delivery is on plan, interactions will focus more on the Trust's journey towards a sustainable organisational form, including Board development. Where delivery is off plan, the NHS TDA will need to understand the actions the Board is taking to recover, and agreements reached with commissioners. The NHS TDA will support challenged organisations by sharing best practice and helping

to identify appropriate improvement support (see Development Model section of this Framework).

However, while the NHS TDA is committed to providing on-going support to help those NHS Trusts who fail to deliver against their plan, where improvements are not delivered, we will escalate our interventions, taking a consistent but flexible approach to reflect the particular challenges and context in line with the principles set out at the beginning of this Framework.

This approach is described in more detail below.

Planning

All Trusts are expected to submit a final operating plan at the beginning of the financial year, in this case on 5 April 2013. Their plan should set out how they will meet the expectations described in the planning guidance.

The NHS TDA will assess the level of risk to delivery based on its review of an organisation's plan. Risks to delivery of *quality* will be assessed based on the most recently published performance against indicators for 2013/14, responses to the quality checklist in Trusts' operating plans, and a qualitative assessment of risk based on handovers from SHAs, including information drawn from partners such as the CQC.

The risk to **financial delivery** will be assessed using indicators including:

- bottom line income and expenditure position;
- actual efficiency compared to plan split recurring / non-recurring;
- forecast underlying revenue position compared to plan for the year.

This integrated risk assessment will be a key determinant of the nature of the NHS TDA's interaction with the organisation from the start of the year.

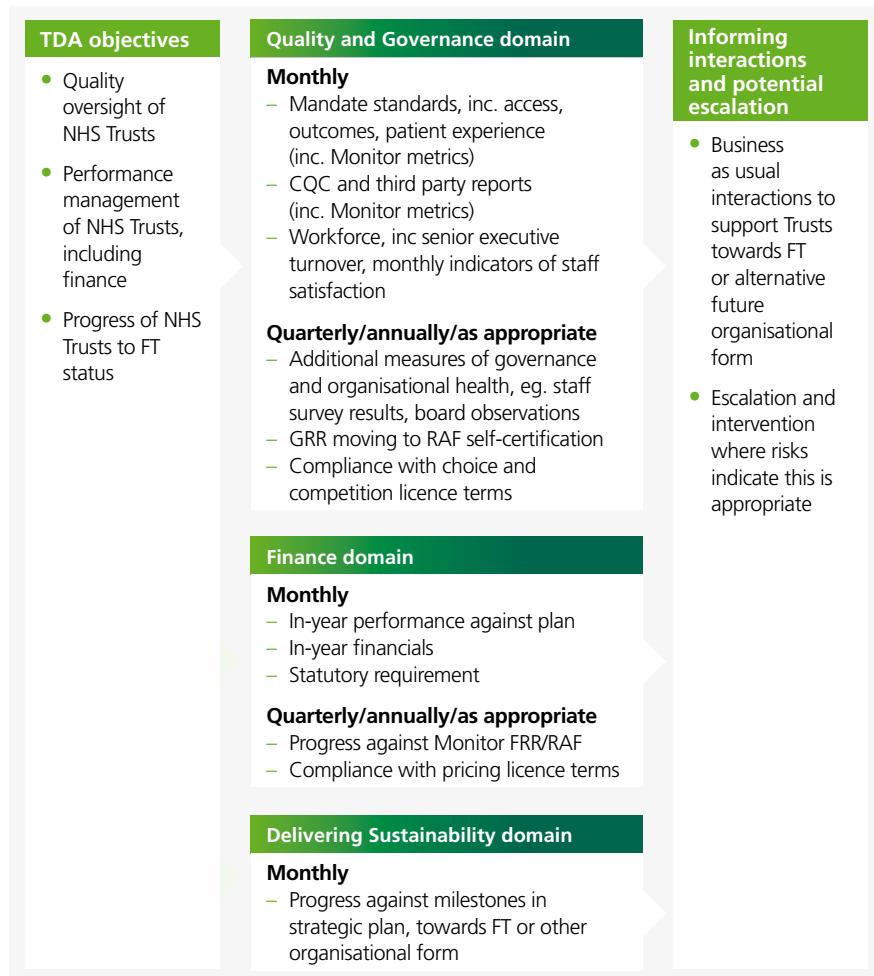
Monitoring

The NHS TDA will assess delivery across three domains:

Domain 1:	Quality and Governance	<i>Quality and Delivery</i>
Domain 2:	Finance	
Domain 3:	Delivering Sustainability	<i>Sustainability</i>

This approach will ensure that understanding and assessing the quality of care will sit at the heart of the NHS TDA's oversight model, in line with the important recommendations of the Mid Staffordshire Public Inquiry in this area. The diagram overleaf more fully illustrates the TDA's approach to monitoring.

Diagram 2 Oversight Domains



A set of indicators has been identified in each domain, building on the measures set out in the planning guidance. Data will be collected against each indicator, mostly on a monthly basis, and assessed against expected delivery thresholds. NHS Trust Boards are expected to ensure that returns are signed off at Executive Director level and Boards should routinely seek assurance of data quality.

Delivery for each indicator will be assessed against thresholds and aggregated at domain level to enable the NHS TDA to compare delivery readily across organisations and care sectors (e.g. Mental Health Trusts), which in turn will inform any decision about whether action is required to support or escalate an organisation.

There are a limited number of requirements that the NHS TDA will require NHS Trust Boards to self-certify against, focussed mainly around Monitor's licence conditions. Licence conditions relating to choice and competition, integration and pricing will be applied to all providers, not just Foundation Trusts, as set out in the Planning Guidance published earlier this year.

Quality and Governance

Wherever possible, we have worked to ensure that the metrics we use to assess NHS Trusts are consistent with metrics required from other organisations to

reduce duplication where possible. The indicators used to assess quality and governance consist of those in Monitor's draft Risk Assessment Framework (January 2013), along with additional indicators introduced to give appropriate assurance to the NHS TDA. In this way the approach will help to prepare organisations for Foundation Trust status while reflecting the need for stronger assurances while organisations remain NHS Trusts. Indicators are grouped in five categories, which are aligned with those proposed by Monitor:

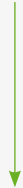
- CQC concerns;
- access;
- outcomes;
- third party reports;
- quality governance.

The indicators for acute services, mental health services, community services and ambulance services are set out in **Appendix 1**. Thresholds for each indicator will be set based on the NHS TDA's expectations of delivery.

Performance against the individual indicators will be aggregated up to category level, ie Trusts will be rated monthly within the quality and governance domain against each of the five categories listed above. This will be on a scale of:

- No identified concerns
- Emerging concerns
- Concern requiring investigation
- Material issue
- Formal action required

Increasing concern



A number of other indicators will be assessed less frequently as measures of an organisation's quality and governance. They will not directly contribute to the quality and governance rating, but will contribute to the overall judgement of the delivery of the organisation. These are set out in **Appendix 2**.

The governance rating of Trusts submitting FT applications is assessed using a range of tools (such as the Monitor Quality Governance Framework), but these tools have not generally been used routinely by Trusts that have not started the application process. The NHS TDA will recommend the use of these tools where it is considered to have merit. In addition, all organisations will also be subject to periodic governance reviews.

Finance

The underpinning business plan that supports an NHS Trust's sustainability is as important as the delivery of high quality services as it helps ensure that good care can be delivered well into the future. NHS Trusts will therefore be monitored against indicators in two categories, the indicators for which can be found in **Appendix 3**:

- In-year financial delivery; and
- Progress towards Foundation Trust status.

Delivery against these indicators will be RAG rated against thresholds and weighted to determine a RAG rating at category level. An overall rating for Finance will be calculated based on in-year financial delivery only.

The NHS TDA will seek assurance that Cost Improvement Plans have been quality impact assessed and that finance, activity, workforce and quality information have been triangulated to help ensure any decisions taken on

efficiency savings do not adversely affect the quality of care provided for patients or the ability for staff to do their job effectively.

Delivering sustainability

Delivering high quality care today is essential, but it is just as important to ensure the conditions are in place to ensure that delivery can continue well into the future.

In addition to the delivery of quality and finance on a day-to-day basis, it is therefore critical that organisations are making progress in addressing the challenges to organisational sustainability. Through the planning process, each organisation is expected to agree with the NHS TDA a timetable of actions to deliver a plan to ensure they are sustainable in the future, whether as a Foundation Trust or by moving to another organisational form.

Many NHS Trusts are considered viable in their current form, however they will need to evidence this in the milestones of the FT application process. For organisations that have determined that they will be unable to submit a stand-alone FT application, a bespoke plan will be required which will focus on the organisational change required in order for the organisation to form part of a viable provider, for example, merger and acquisition or service reconfiguration.

The NHS TDA will monitor progress against the agreed timeline on a monthly basis.

As part of the oversight process we will also ask each NHS Trust to self-report monthly against a small number of requirements. These will form an important part of the conversation with NHS Trusts both in relation to ongoing oversight as well as each organisation's journey towards some sustainable organisational form. These cover:

- monitoring progress against the Trust's timelines to sustainable organisational form;
- compliance against relevant NHS Trust Monitor licence conditions;
- self-assessment against Board Statements.

Further detail can be found on these in **Appendix 4** of the supporting appendices.

Routine interaction

Integrated delivery meetings

The NHS TDA will aim to have a 'single conversation' with Trusts encompassing quality, finance and progress towards a sustainable organisational form. The local Delivery and Development teams will lead a monthly integrated delivery meeting with each Trust's executive team to

The oversight model (continued)

review progress against its operating plan, supported by specialists in Finance and Quality. These meetings will identify any support required by the organisation.

The integrated delivery meetings will be supported by a range of day-to-day interactions with the Trust. These are intended to promote a positive, open relationship based on a common understanding of success. The tone of interactions will be respectful, constructive and focussed on outcomes not process.

Human Resources

The NHS TDA has an important relationship with Trusts in relation to certain workforce and human resources issues, in particular:

- The TDA will have responsibility on behalf of the Secretary of State for making Chair and non-executive appointment to NHS Trusts, for ensuring chairs and non-executives have appropriate training and support, and for the suspension and dismissal of chairs and non-executives when this is required. Policies relating to these processes are available on the TDA website.

- The NHS TDA will be responsible for the annual appraisal of NHS Trust Chairs.
- Members of the TDA Executive Team will act as external assessors when NHS Trusts make Director appointments.
- The NHS TDA will have a role in agreeing annual performance assessments for NHS Trust Chief Executives.
- The NHS TDA Remuneration Committee will be required to approve remuneration rates for some senior appointments made by NHS Trusts, particularly ambulance and community providers.
- The NHS TDA Remuneration Committee will be required to approve proposed severance arrangements for senior NHS Trust staff. Details of the NHS TDA's role in appointment, remuneration, performance assessment and severance decisions was set out in writing for NHS Trusts in March 2013.

Further information about the role of the NHS TDA in executive HR decisions by NHS Trusts can be found at **Appendix 5**.

Escalation

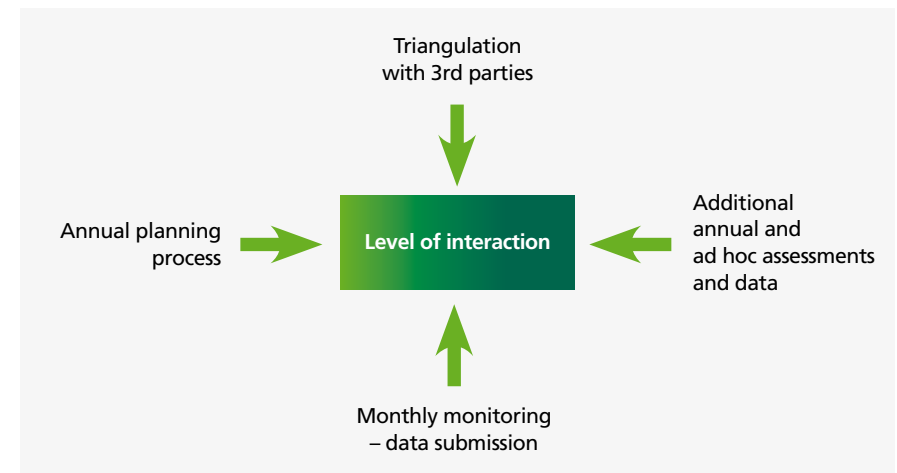
The planning process, monitoring of key indicators, routine formal and informal interaction and the provision of support to NHS Trusts are intended to ensure that no organisation requires escalation. However, where, despite this, an organisation is failing to deliver the standards that its patients have a right to expect, the NHS TDA will intervene to ensure recovery.

In determining whether intervention is required, the NHS TDA will aim to make an informed judgement based on multiple sources of intelligence. Triggers for escalation will include:

- current performance against the Quality and Governance, Finance and Delivering Sustainability domains, and trends in the data in previous months;
- an assessment of the capacity and capability of the organisation to deliver recovery plans; and
- 'soft' intelligence based on routine interactions with the Trust and with partner organisations.

The Delivery and Development, Finance and Quality teams will moderate the information available to determine the perceived level of risk of each organisation, and the appropriate level of escalation. This is illustrated below.

Diagram 3 Moderation of intelligence



The oversight model (continued)

The NHS TDA will seek to balance the importance of consistency in the judgements it reaches with the need to take a bespoke and flexible approach to each organisation based on a detailed understanding of the issues.

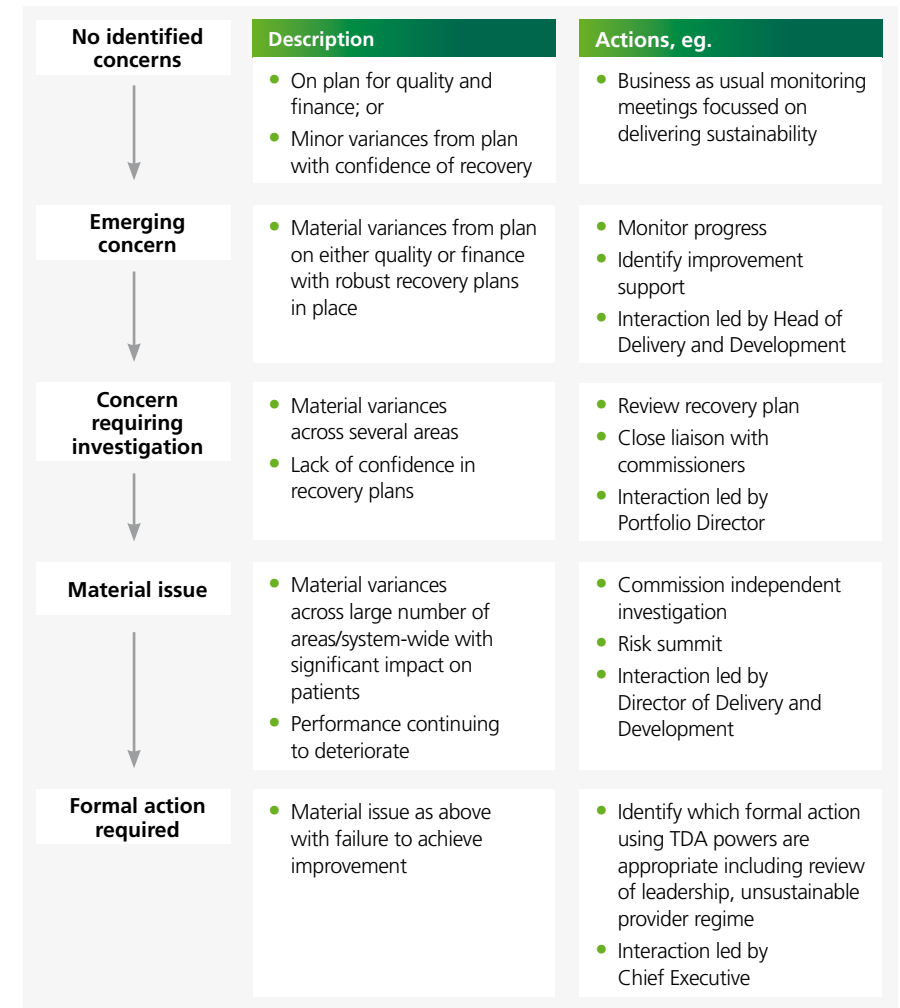
We recognise that Trusts have a contractual relationship with Clinical Commissioning Groups and for specialised services with the NHS Commissioning Board; and a regulatory relationship with the Care Quality Commission through registration. The NHS TDA will work in partnership with these organisations through Quality Surveillance Groups and through informal information sharing to ensure that its interventions are targeted and co-ordinated. Going forward, the NHS TDA will align its approach to intervention with the regime of the new Chief Inspector of Hospitals to realise the ambition of creating a single failure regime for NHS providers.

Interventions which the NHS TDA may consider will include:

- requesting recovery plans and additional reporting;
- increasing the frequency and seniority of engagement with the organisation;
- commissioning an independent 'deep dive' investigation or audit;
- reviewing the skills and competences of executive and non-executive Board members;
- commissioning interim support to provide additional management capacity;
- *in extremis*, recommending the enacting of the Unsustainable Providers Regime.

The diagram overleaf illustrates the escalation process which will be followed by the NHS TDA. The triggers listed are indicative and the actions described are examples.

Diagram 4 Escalation



The development and support model

NHS Trusts provide a wide range of services for patients across England, from the most specialised hospital care through to a diverse range of community services. The role of the NHS TDA is to hold NHS Trusts to account but at the same time to support them to maximise their potential for delivering high quality, sustainable services.

Supporting and developing NHS Trusts is therefore critical to the NHS TDA's role as our success is inextricably bound up with the success of the Trust sector.

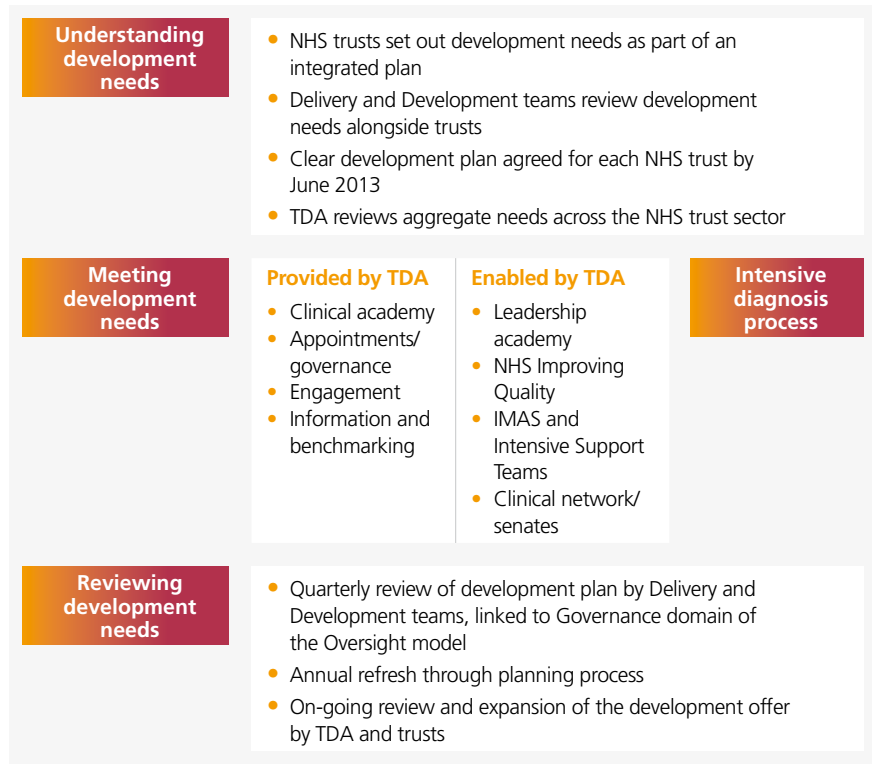
Every organisation has development needs and for NHS Trusts, with the demanding environment they face and the challenge of moving to Foundation Trust status, those needs are likely to be significant and important. Understanding and meeting Trusts' development needs is therefore a critical part of the NHS TDA's Accountability Framework and will be central to our relationship with you.

The role of, and approach to, our development work will seek to reflect the important findings of the recent Mid Staffordshire NHS Foundation Trust Public Inquiry. That means that we will seek in particular to provide support for addressing clinical quality issues, for creating more patient-centred services, and for understanding and improving organisational culture.

The NHS TDA is designed to ensure that the focus of each and every one of its employees is to support NHS Trusts to improve the quality of care they provide, the business plans which underpin each Trust's approach and how they communicate with the local communities they serve.

Having, for the first time, an organisation which oversees all NHS Trusts means that we can both get a better understanding of the improvement needs of the sector, and work collectively to tackle the issues which are common amongst our organisations. We can, of course, use our bargaining power to buy in expertise from elsewhere where necessary, but many of the issues one organisation faces have already been tackled by other organisations: harnessing that learning, sharing best practice and being ambitious to improve will underpin our approach going forward.

The Development & Support Model sets out our intended approach to development, an initial analysis of development across the NHS Trust sector, and key aspects of the initial development offer to Trusts. We expect the offer to develop over time and will work with NHS Trusts to ensure the model meets their needs.

Diagram 5 Overview of the TDA development model**The role of development**

There has been a tendency in the past for development to be seen as separate from the core business of organisations. The NHS TDA views things differently: effective development and support is critical to ensuring an organisation is able to conduct its core business of providing high quality, sustainable services for patients.

Every NHS Trust has a unique set of circumstances shaped by history, geography and politics, so every organisation will have a different set of development needs. Nevertheless, while the content of each trust's development offer will be different, we need a consistent process to ensuring development needs are met.

We want to take a holistic approach to understanding how NHS Trusts are performing and helping them to improve; that means development needs to be part of our routine business with NHS Trusts, a part of all of our conversations and interactions.

The Delivery and Development teams of the TDA will be central to this process, as they manage the NHS TDA's over-arching relationship with NHS Trusts, and the Quality and Business teams locally will also have a central role in providing support and enabling access to more specialised development resources.

We envisage a very simple process to ensure consistency in our approach to development issues, centred on 3 steps: understanding needs, meeting needs, and regular review. These steps are outlined in the following sections.

Understanding development needs in the NHS Trust sector

Fundamental to an effective development process is a deep understanding of an organisation's needs. Potential development needs in a highly complex healthcare provider will inevitably be numerous and diverse, from support in tackling specific clinical quality issues, through to whole Board development.

We want the assessment of development needs for NHS Trusts to be an on-going and joint process between NHS Trusts and the NHS TDA, recognising needs will change over time. We have started that process through the 2013/14 planning process, by asking the Board of each NHS Trust to identify the organisation's core development needs as part of their integrated plan.

Through that process we want to establish an initial understanding of the development needs of all NHS Trusts, the starting point for discussions with local Delivery and Development teams about how those needs can be met.

The development and support model (continued)

The data will also help us to understand the nature of development needs across the sector, which is crucial to ensuring that we can work as an organisation and across the broader NHS to meet those needs.

NHS Trusts have identified a wide range of needs in their planning submissions. The most common development needs identified so far through that process are set out below:

Rank	Development Area	No. of times identified
1	Benchmarking/performance indicators/sharing best practice	60
2	Service or pathway development/redesign/transformation	25
3	Board development	21
4	Clinical leadership – management / training	19
5	Workforce development, planning, design, productivity	18
6	Commercial capability	17
7	Organisational development / culture	17
8	Relationship management	16
9	Staff engagement	15
10	Senior management – leadership/succession planning	12
11	Service line management	11
12	Middle management development	8

This analysis represents the initial views of NHS Trusts themselves and will require further iteration and discussion with the NHS TDA's Delivery and Development teams. The first cut of the analysis demonstrates the diversity of needs across the sector, and the wide range of different sources of development support that Trusts will need. Particularly striking is the consistency with which NHS Trusts have identified benchmarking and sharing of best practice as an area for development.

Meeting development needs

The TDA has a clear role in supporting NHS Trusts to meet their development needs. In some areas, the TDA will seek to meet the needs of organisations directly, in others we will work with partner organisations in the system to ensure that needs are met. So the TDA will be both a **provider** and an **enabler** of development support for NHS Trusts.

Support from within the TDA

The TDA will have a small but diverse and highly skilled set of staff with a range of knowledge, experience and insight. Many of these staff will work closely locally with NHS Trusts on supporting them to deliver their goals and on specific areas including quality and finance. Staff based locally will also be able to access expertise in other parts of the TDA to support specific needs of NHS Trusts.

For example, within the clinical quality directorate, local quality teams will be supported by experts on quality information, medicines management and patient experience. And local business teams will be supported by experts on capital planning, on the FT application process and on transactions. So wherever someone in any part of the TDA has knowledge and skills that could be useful to a Trust, we will look to make that connection and provide that support.

In addition, the TDA will develop a number of specific offers of support:

- a **clinical faculty** to provide access to expert advice on specific clinical issues;
- supporting trusts to **access benchmarking information**, particularly given this was the most commonly identified development need;
- ongoing support for **engagement activities** to bring the NHS Trust community together to solve problems;
- the TDA **appointments team** which can provide expert advice for Trusts on non-executive appointments and governance.

The TDA clinical faculty

The Clinical Faculty of the TDA will support clinical leaders in NHS trusts through the journey towards FT status and the delivery of the TDA's aspiration to deliver sustainable, high quality services for the communities they serve. The support available to clinical leaders will include:

- mentorship;
- coaching (where skills and qualifications are available);
- taking part in, or leading, master classes or similar learning events;
- action learning sets;

- supportive clinical networks;
- clinical / specialist advice to specific projects;
- review of specific clinical services in trusts;
- review of quality for trusts in specific sectors (e.g. mental health or ambulance trusts);
- advise on the formulation and refresh of TDA policies;
- special projects.

Support for benchmarking and analysis

The NHS TDA is currently in the process of designing the information output that will be available to colleagues both within the organisation and to NHS Trusts.

A number of initiatives are currently underway, some in collaboration with other national partners, for example the NHS Information Centre and the NHS Commissioning Board to ensure that existing analyses are appropriately utilised by all users, both during and after the Transition. Some of this work is at the early stages but we anticipate partnership working to address some of the information challenges facing Mental Health and Community Trusts.

At the same time the NHS TDA is developing its own information provision, which will include a number of high level dashboards including performance, quality, ambulance, activity and finance. The intention is that, where appropriate, these dashboards and underlying analyses are made available to all NHS Trusts.

The NHS TDA will follow the principles of openness and transparency in regard to information provision and where possible will make available the results of analyses, along with the methodologies utilised and the source data.

The NHS TDA is currently developing and testing an iPad application which will allow access to high level analyses via tablet platforms.

We are aware of the utility of benchmarking analyses and over the coming months will be working with colleagues to scope out the nature of any benchmarking analyses to be done by the organisation, as well as signposting Trusts to existing resources.

Engagement and networking

In the 12 months running up to the formal launch of the NHS TDA on 1 April 2013, as part of the development of our new organisation, we have engaged with directors of NHS Trusts right across the country.

Different professional groups – Nurse Directors, Medical Directors, Finance Directors and Communications Directors – have met to establish groups and to help design the approach to planning and accountability going forward.

Those networks will be maintained throughout the lifespan of the NHS TDA, however, instead of meeting purely on a geographical basis, groups will be established to look at specific issues when a common need for improvement is identified.

Directors from organisations with shared challenges will be brought together to look at current best practice and identify action plans to improve services in their own organisation. Using data from routine analysis of performance to identify issues, the groups will provide self-support with action plans monitored as part of routine performance monitoring.

Appointments and governance

The NHS TDA has responsibility for all matters relating to chairs and non-executive directors of NHS Trusts. Using a range of different tools, we are able to help develop strong and effective NHS Trust boards.

The most important element of this is ensuring that NHS Trusts are able to benefit from strong and effective non-executive teams. This of course, includes the chair, who provides strategic leadership to the organisation and in particular the board. We will work with the chair to ensure that the non-executives have the best possible mix of skills and experience, matched to meet the needs of the organisation.

Once appointed, both chairs and non-executives will have access to a range of support services, to ensure that they are able to be as effective as possible, as quickly possible. They will immediately be invited to participate in an induction programme, provided by HFMA but developed with the NHS TDA and other partners. They will also receive, through their chairs, regular newsletters from the NHS TDA, setting out the key issues of the day.

Key to continuing development is active engagement in a regular appraisal process. From early in 2013/14, the NHS TDA will put in place arrangements for an effective but proportionate appraisal process, which will enable chairs and non-executives to receive annual performance appraisals, including for chairs, 360° appraisal, developed specifically to assess chair and non-executive competencies and objectives.

The development and support model (continued)

Support from the wider system

The NHS TDA is a small organisation with limited resources and so it will often be necessary to look to the wider system to meet the development needs of NHS Trusts. Where that is the case, the NHS TDA will support and enable those connections to be made and work with key organisations in the system to ensure their offers meet the needs of NHS Trusts. These will include:

- The NHS Leadership Academy;
- NHS Improving Quality;
- The NHS Intensive Support Teams; and
- NHS Interim Management and Support (NHS IMAS).

The NHS Leadership Academy

The purpose of the Leadership Academy is to develop outstanding leadership in health services, in order to improve people's health and their experiences of the NHS. This will be achieved by:

- broadening, and where necessary changing, the range of leadership behaviours people in the health system use;
- professionalising leadership: raising the profile, performance and impact of health system leaders, requiring and supporting them to demonstrate their fit and proper readiness to carry out their leadership role and defining what we expect from them;

- working in partnership to make leadership in the health system more inclusive and representative of the communities it serves;
- developing leaders who are more innovative and can create a climate where innovation can flourish.

There is unequivocal evidence in every sector that there is a strong relationship between leadership capability and performance. Good leadership leads to a good organisational climate and good organisational climates lead, via improved staff satisfaction and loyalty, to sustainable, high performing organisations. This is as true in health care as it is in any other business.

In considering the top 12 identified development needs, the overwhelming majority are issues which can be helped and supported through the generic activities of the Leadership Academy.

NHS Improving Quality

The purpose of the new organisation NHS Improving Quality (NHS IQ) is to improve health outcomes for patients across the NHS in England by:

- developing and implementing improvement programmes to deliver the NHS Outcomes Framework;
- building improvement capability and capacity throughout the commissioning system;

- supporting improvement across the wider NHS.

NHS IQ will support the wider NHS system including the NHS TDA and Academic Health Science Networks (AHSNs) in delivering improvement goals to support transformation. Their whole system responsibility is described in the Memorandum of Understanding (MOU) with the DH. This will mean offering improvement support to NHS organisations and networks, in particular NHS TDA and AHSNs.

NHS IQ will consist of a core team of approximately 70 staff who will contract with a series of partners to deliver on its behalf. The core team will:

- design and commission programmes of improvement and improvement capability linked to the 5 Domain Priorities in the NHS Outcomes Framework;
- source, deploy, and manage a range of delivery partners from within the NHS and potentially social care organisations, voluntary sector, academic organisations and the independent sector. Build knowledge and capacity for leading change and improvement across the NHS, particularly across Regional and Area Teams, CCGs and CSUs;

- work with the emerging Strategic Clinical Networks and AHSNs, at a national level, to build a framework for local improvement and innovation;
- act as a source of expertise, research, development and ideas for change and improvement in healthcare;
- link with the NHS Leadership Academy to build leadership capability for change.

Specific aspects of the NHS IQ offer which may be of particular value to NHS Trusts include:

- access to a wide range of case studies and best practice to support delivery across a range of areas;
- support for peer review visits to Trusts focussed on improving clinical pathways; and
- practical support for improvement, including the 'Productive' series, support for the development of 7-day services, and programmes focussed on improving patient safety.

The NHS Intensive Support Teams (ISTs)

The Intensive Support Teams, currently hosted by NHS IMAS, but forming part of the new Improvement Body, NHS Improving Quality (NHS IQ) from 1st April, will offer bespoke support to NHS trusts through two teams:

The development and support model (continued)

- The Emergency Intensive Support Team – working with health communities to support changes in practice to deliver best practice emergency flows and the delivery of sustainable services.
- The Elective Intensive Support Team – working mainly with NHS trusts and NHS Foundation Trusts to deliver change and sustainability in all aspects of elective care, including cancer services.

Both teams provide expert support directly to NHS organisations. This includes a diagnostic/gap analysis and advice on best practice in emergency and elective care management and continuing programmes of support to assist with the implementation of recommendations. They work by invitation with all parts of the NHS including FTs, Trusts, community health services, social care, primary care and commissioners to provide: analysis of key issues impacting on performance, patient safety and experience; the sharing of national best practice; improvement programmes to address identified concerns; external assurance for NHS Boards.

Very often, IST assistance is requested when performance against agreed patient access standards is deteriorating. The aim is to build local capability and

capacity so that resilient, sustainable solutions can be developed and maintained by the organisation after the IST has completed its programme of work. Both teams focus on clinician to clinician discussions, providing support to clinical and managerial senior leaders and can offer clients a responsive support service funded centrally by the NHS Commissioning Board and therefore free of charge.

NHS Interim Management and Support (IMAS)

NHS IMAS offers NHS organisations that need short or medium term support, the means to access the management expertise that exists throughout the NHS: 'By the NHS, for the NHS'.

NHS IMAS has a large pool of talented NHS managers who are able to provide short to medium term consultancy or interim support to enhance, or fill temporary gaps in, organisational management capacity or capability. NHS IMAS also has an approved cohort of independent interim consultants and interim managers that it can draw upon. The aims of NHS IMAS are to:

- encourage and facilitate the NHS to use the wealth of skills already available to it, in order to improve and sustain the quality of health care services in the local communities they serve;

- provide the support that is needed by the NHS, but to do so in a way that builds a sustainable legacy;
- grow and develop local NHS talent, working with NHS leadership development;
- provide a real alternative to the private sector, while still offering the option to access their skills;
- provide flexible, rapidly deployable expertise to local health communities to support operational performance improvement and turnaround in emergency and elective care through the ISTs.

Reviewing development needs

It is clear from this document that we have useful initial data about the nature and scale of need in the Trust sector, as well as an emerging offer about how those needs can be met. The table below sets out how the most commonly identified needs can be met through the different aspects of the offer provided both by the NHS TDA and the broader system:

Development Areas	Relevant aspects of the support offer
Benchmarking/performance indicators/sharing best practice	NHS IQ, NHS Leadership Academy, Clinical Faculty, TDA information team, Intensive Support Teams
Board development	NHS Leadership Academy, Clinical Faculty, TDA appointments team
Service or pathway development/redesign/transformation	NHS IQ, Clinical Faculty, Intensive Support Teams
Clinical leadership – management/training	NHS Leadership Academy, Clinical Faculty, NHS IMAS
Workforce development, planning, design, productivity	NHS IQ, TDA information team, Intensive Support Teams
Commercial capability	NHS Leadership Academy
Organisational development/culture	NHS Leadership Academy, NHS IQ, Clinical Faculty, TDA appointments team
Relationship management	TDA team
Senior management – leadership/succession planning	NHS Leadership Academy, Clinical Faculty, NHS IMAS
Staff engagement	NHS IQ, TDA team
Service line management	NHS IQ, Clinical Faculty
Middle management support	NHS Leadership Academy

The development and support model (continued)

It is important that this is not a one-off exercise, so we will be building review of development needs into regular interactions between NHS Trusts and the NHS TDA. Development will be central to the Oversight regime and the regular interaction between Delivery and Development teams and NHS Trusts.

Where a Trust's needs cannot be met by the NHS TDA or through this wider network of organisations, we will consider bespoke approaches to meeting those needs.

To this end, the TDA is working closely with the Leadership Academy and NHS Improving Quality (NHS IQ) to bring together a framework to enable a bespoke development offer for significantly challenged trusts, which will be recognised through the sign off process on annual plans which will identify the level of risk in trusts in the domains of quality and governance, finance and delivering sustainability. This development offer will comprise engaging a specialist team of people from the Leadership Academy, its associates and where appropriate NHS IQ, to focus on specific issues that are preventing trusts finding a sustainable organisational solution, or issues significantly impacting on quality, governance and/or finance.

The development offer would be facilitated through the Leadership Academy and would be enabled through the relevant Portfolio Director. The approach would be designed around the particular needs of the trust concerned and would be intended to define the issues of the trust and then develop specific tailored interventions to address those issues. Examples of this sort of approach could be a deep dive/ diagnostic approach, focussed board development activity, support for deep seated performance and delivery issues, strategic service reviews and support for implementation approaches.

This specialist support would be over and above those offers already made by the Leadership Academy, NHS IQ, and other agencies whose support is outlined in other sections of this document.

Our expectations for all NHS Trusts is that both the nature of the need and how well it is being met is reviewed between Trusts and Delivery and Development Directorates at least every quarter, and that development is discussed at all routine interactions between NHS Trusts and the NHS TDA. Development needs will also be refreshed and reviewed as part of the annual planning cycle for NHS Trusts.



The approvals model

The aspiration of the NHS TDA remains a simple one: to support NHS Trusts to deliver high quality, sustainable services for the patients and communities they serve.

Ensuring Trusts are ambitious for their patients through the Planning Guidance, holding them to account for delivery through the oversight model and supporting them to overcome problems and tackle key issues on that journey all form part of the core offer of the NHS TDA.

Achieving these things will also ensure that an NHS Trust is well placed to attain the freedoms that come with FT status.

We've worked hard to ensure that the FT application process we have designed is clear and simple to follow, open and transparent, and focussed on quality and sustainability: all of which should both simplify and add new rigour to the processes which NHS Trusts follow in their journey toward FT status.

Those same principles apply to the models we have developed to support NHS Trusts in organisational transactions, capital schemes and service change proposals.

In taking on various responsibilities in the Foundation Trust development and assurance process that previously sat with SHAs, the DH and Ministers, our

model builds on the single operating model that has now been in use for some months and responds to the changes in the architecture of the NHS and learning from the past year.

Creating the right approach

The NHS TDA is seeking to implement processes which build on previous processes but are even more focused on improving quality and developing trusts to be sustainable.

It is recognised that the Single Operating Model, previously developed by the Department of Health, built on best practice, encouraged greater consistency with Monitor's authorisation approach, improved and developed processes where needed and made full use of best practice tools.

This guidance builds on that model, with many similar elements forming part of our approach. Nevertheless we have significantly bolstered the assurance focus on quality and workforce to reinforce the focus of the NHS TDA in ensuring that only high quality organisations are put forward to Monitor as fit to self-govern.

In order to reduce bureaucracy we have also streamlined the central assessment phase for FT applications and transactions and integrated this with final sign off.

Whilst these modifications aim to shorten approvals time it will also, importantly, require a change in attitude and culture. Previously, significant revisions of applications has occurred during the central review. The NHS TDA's model upstreams key application requirements to shorten approval times, requiring a change in mindset away from assurance late in the process. Going forward, and reflecting the recommendations of the Mid Staffordshire Public Inquiry, we will expect prior to assessment by the NHS TDA Board that all proposals are full and final and reflect the central importance of delivering high quality, sustainable services.

The NHS TDA also expects all proposals to be open and transparent and to declare all relevant information in line with the duty of 'utmost good faith' recommended by the Mid Staffordshire Public Inquiry.

The Foundation Trust approvals process

The model in **Appendix 6** sets out the standard NHS TDA process for the development and assurance of Foundation Trust applications. It provides NHS Trusts and NHS TDA staff with a clear and transparent process that will be used to support NHS Trusts to achieve the long-term ambition of becoming NHS Foundation Trusts.

This guidance should be read in conjunction with *Applying for NHS*

Foundation Trust Status: Guide to Applicants which sets out in detail the NHS Foundation Trust application process. In contrast this guidance sets out the specific steps the NHS TDA will take to gain assurance about the quality, safety and sustainability of applications.

The NHS TDA's role is to ensure, on behalf of the Secretary of State, that aspirant FTs are ready to proceed for assessment by Monitor. As such, the processes outlined here replace those previously undertaken by both SHAs and the Department of Health.

In line with the recommendations of the Mid Staffordshire Public Inquiry, the achievement of FT status will only be possible for NHS Trusts that are delivering the key fundamentals of clinical quality, good patient experience, and national and local standards and targets, within the available financial envelope.

This guidance sets out the development and application and approval process that the NHS TDA will follow. It involves:

- an initial phase of diagnosis;
- a subsequent phase of development; and
- a final assurance phase culminating in an NHS TDA decision to support the application to proceed to Monitor assessment.

The full process is set out below.

At its core the process centres on certain key decisions. During the second phase the NHS TDA Delivery and Development Director will oversee a formal NHS TDA readiness review to ascertain progress and development needs.

Following this readiness review NHS Trust Boards will then revise their documents and make progress with key action plans, which culminates in a full and final submission to the NHS TDA. This will then result in an assessment by an NHS TDA Board to Board review.

Following the NHS TDA Board to Board there will then be a final decision by the NHS TDA Board at a public session as to whether the application is passed to Monitor or not.

Stage 1: Diagnosis and due diligence

This stage involves both the Trust and the NHS TDA establishing a baseline against which the Trust needs to build a high quality, safe and sustainable Foundation Trust application.

What the trust will do

- Undertake self-assessments and begin production of key documents in line with the *Applying for NHS Foundation Trust Status: Guide to Applicants*.

- Schedules initial external assessments comprising:
 - third party review of Trust self-assessment of Board Governance Assurance Framework (BGAF);
 - independent third party review by qualified and experienced professionals of Trust self-assessment against Monitor Quality Governance Assessment Framework (QGAF) requirements;
 - independent financial Due Diligence stage 1;
 - the trust will assist the TDA in collating a range of quality information and share information in a way that reflects the duty of candour.
- Prepare and share development plans in response to external assessments with NHS TDA, e.g. the Trust would be expected to develop actions plans where there are quality issues or concerns.
- Completes self-assessments against key FT requirements and self-certifying against Compliance Framework questions and submit these to the TDA.
- Prepare documents and supporting strategy for public consultation on the proposed Foundation Trust application.

What the NHS TDA will do

- Conduct introductory meetings with Chair and CEO and FT Director of the applicant Trust. This will include the NHS TDA MD/ND making contact with the Trust MD/ND and initiating involvement of the NHS TDAs Clinical Quality Director in each region, working closely with the Delivery and Development teams.
- The NHS TDA Delivery and Development and Quality teams to develop detailed trust quality and delivery profile which takes into account CQC and other external reports.
- The NHS TDA Portfolio and Quality team will conduct and document:
 - an initial Board interview and initial Board observation;
 - interviews with Commissioner(s) and other purchasing organisations including Local Authorities;
 - interviews with HEE, NHSCB, LETB, the CQC and, where applicable, the Local Supervising Authority Midwifery Officer.
- Set and agree the Foundation Trust trajectory including key milestones.
- The NHS TDA clinical quality team will conduct an internal review of quality information and associated intelligence which will inform the focus for a rapid responsive review (see below).

- Sign off documents and supporting strategy for public consultation on proposed Foundation Trust application.

Stage 1 culminates in the decision, agreed by the applicant and the NHS TDA, to proceed to public consultation on the application.

Stage 2: Development and application

This stage involves the submission of key documents to the NHS TDA and the testing and scrutiny of trust plans and personnel. It begins with the readiness review and following that review leads to the identification of further development needs and additional work.

What the trust will do

- Make a formal submission of key FT application documents to the NHS TDA to inform FT readiness review meeting.
- Prepare for a formal FT readiness review meeting with the NHS TDA.
- Following the readiness review develop further iterations of key documents including their clinical and quality strategy, business plan and financial model in response to NHS TDA feedback.
- Update on the delivery of outstanding action plans on quality, safety, service performance and sustainability.
- Deliver FT action plans by the Trust with updates to the NHS TDA and on-going updates of self-assessment and self-certifications.

What the NHS TDA will do

- Conduct an internal NHS TDA review of progress against quality, delivery, sustainability plans (including soliciting external views, e.g. to incorporate Quality Surveillance Group views).
- Complete a clinical review of trust through application of the National Quality Board rapid responsive review methodology.
- Assess the trust's internal governance. NHS TDA portfolio teams will observe the Board and Trust Board sub-committees including Finance and Quality sub-committees.
- Undertake a readiness review meeting with the Trust Board. The readiness review meeting will include the Director of Delivery and Development, two Portfolio Directors (one from across the NHS TDA), the Clinical Quality Director and Business Support Director.
- Feedback on progress. The NHS TDA will formally write to the Trust and confirm the outcome of the readiness review, e.g. the NHS TDA agree to the commencement of Due Diligence stage 2. Progress will be monitored through regular oversight meetings.
- Identify additional development needs and support.

Stage 2 culminates in the decision, following the NHS TDA Readiness Review, to proceed to a full and final assessment by the TDA Board.

Stage 3: Assurance and approval

This stage involves the full and final submission of documents to the NHS TDA and involves assessment by the NHS TDA Board that the Trust is ready to undergo a detailed Monitor assessment.

What the trust will do

- Make board approved final submissions of key products to inform NHS TDA sign-off of FT application and Board to Board review meeting.
- Respond to queries from the NHS TDA on any areas of clarification or where further assurance is sought.
- Trust to address any outstanding issues.

What the NHS TDA will do

- NHS TDA Portfolio team review of final assurance documents and production of draft Board to Board pack and recommendations.
- The NHS TDA quality team convenes a quality review meeting with CQC, HEE, NHS CB, CCG and other relevant external parties.
- Clinical visit by the NHS TDA MD / ND where quality profile is subject to further assessment.

The approvals model (continued)

- Peer review by a second NHS TDA team of the submissions, draft Board to Board pack and recommendations.
- Board-to-Board meeting between the NHS TDA and NHS Trust.
- Relevant NHS TDA Director of Delivery and Development, Medical Director, Nurse Director and Finance Director present the application to the NHS TDA Executive for their support and sign off.

Stage 3 culminates in a decision by the NHS TDA Board on whether the applicant is ready to proceed to assessment by Monitor.

Checklists will be produced which will describe in more detail the actions which the NHS TDA Portfolio Teams will oversee to support the development of an FT application, ensure equity of approach and enable consistency of decision making. It is important to note that many NHS trusts have progressed beyond many elements of the initial stage 1, but that this stage is included here for completeness.

The NHS TDA will look at further opportunities to streamline the process. For example there is a significant overlap in the BGAF, QGAF and HDD assessments both in terms of people, questions and the benefits of triangulation. The NHS TDA will explore with Monitor the benefits of bringing together these external assessments into a common single external assessment process.

We will also work with Monitor on the arrangements for public engagement. Public engagement will remain an important part of the process of becoming an FT, and the NHS TDA will work with Monitor to determine an approach to assessing public engagement during the application process.



Creating sustainability: transaction approvals

The NHS TDA is responsible for ensuring that all NHS Trusts achieve a sustainable organisational form. Where a Trust cannot achieve sustainability as a Foundation Trust in its current form, a range of transactions can be considered to achieve sustainability.

This section sets out the standardised NHS TDA process for the development and assurance of NHS Trust plans to achieve high quality, safe, sustainable services through a transaction.

A transaction may take different forms but always involves a transfer in the ownership of assets and liabilities and/or a business/service from one organisation to another. In the NHS, many transactions have taken the form of mergers (between NHS Trusts) or acquisitions (by an FT of an NHS Trust).

A description of the different forms of transactions is included later in this guidance. **Whilst all transactions are different, in all cases where a transaction involves an NHS Trust, the NHS TDA is the Vendor in the transaction.** This guidance establishes a clear set of principles that may be used to assist local teams in following best practice and achieving good value for money in the transfer of an NHS asset/business to a new owner.

The transaction process itself, as described in this guidance, is structured around four Gateways. At each of these sequential Gateways the NHS TDA will seek to satisfy itself that decision-making has been clear and is supported robustly by evidence, before entering the next phase of the transaction.

The first of these Gateways requires assurance that a transaction is the only feasible way that an NHS Trust's services can be made sustainable within a reasonable timescale.

Transactions can be expensive and time-consuming so it is therefore essential that before embarking on a transaction approach, local stakeholders (especially NHS commissioning bodies) and the NHS TDA Board have assurance that the benefits are likely to outweigh the costs.

The NHS TDA Board is clear that a transaction must only be pursued if it can be shown to improve the quality of healthcare available to patients and value for money for the taxpayer. These benefits are likely to be both in terms of improving current standards of care to patients and financial benefits.

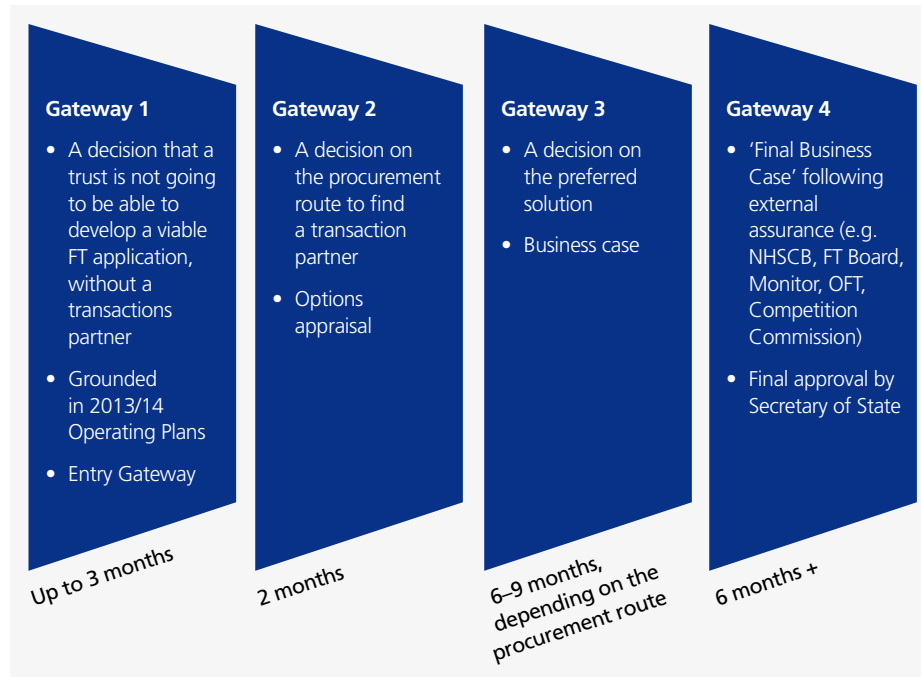
The NHS TDA takes on responsibilities for FT development (and the assurance of this process) that previously sat with Strategic Health Authorities (SHAs) and the Department of Health (DH), the latter in regard to the role of the DH Transactions Board.

From a review of different SHA policies, it is clear that interpretation of the 2007 DH Transactions Manual has followed different paths. We have attempted to re-standardise an approach consistent with what may be regarded by experts as best practice.

Much of the NHS system has changed radically since 2007. In particular, Monitor's role has changed and continues to expand; commissioning arrangements for trusts have become much more localised; responsibility for assessing the impact of an FT acquisition on competition in the developing marketplace is to transfer from the Cooperation and Competition Panel (CCP) to the Office of Fair Trading (OFT) and Competition Commission (CC).

The NHS TDA approach

The transactions assurance process is defined by a series of sequential Gateways, each requiring NHS TDA approval and Clinical Commissioning Group (CCG) and NHS Commissioning Board (CB) endorsement. The process consists of 4 defined Gateways:

Diagram 6 Key decision points

Gateway 1 is the trigger point for when the NHS TDA kicks off the transactions process, because a Trust is not able to prepare a viable FT solution.

For the purposes of this guidance, a viable FT solution consists of: a clinical strategy supported by commissioners and local clinical leaders, a track record of providing high quality healthcare, a robust Long Term Financial Model (LTFM) and a Project Plan. The assessment of non-viability may be a direct outcome of the 2013/14 planning round (or subsequent review of operational plans).

The NHS TDA's local Delivery and Development Director may decide to instigate a Gateway 1 review, to ensure that a trust has a robust plan to achieve FT authorisation.

The Gateway 1 review will include consideration of alternatives to pursuing a transaction. The relevant D&D Director would present a report to the NHS TDA executive based on the outcome of this review. Trusts unable to demonstrate a viable FT solution to the NHS TDA will enter the 'transactions pipeline'.

Gateway 2 is the NHS TDA decision on the appropriate form of procurement. An Executive Director of the NHS TDA will be designated as SRO for each transaction (i.e. for Gateways 2 to 4) and establish a Transactions Committee. The NHS TDA will adopt an option appraisals process to assess a range of alternatives that can be benchmarked against the 'do minimum' identified at Gateway 1 (e.g. new and additional executive or non-executive capability).

Transaction types are evaluated (e.g. a 'simple' management contract, an 'informal market test' to determine an 'NHS-only' solution or a 'complex' procurement involving the private sector).

The option appraisal process will ensure that the cost and length of any transaction is grounded in an explicit consideration by the NHS TDA of the potential added value of larger scale interventions.

The option appraisal also needs to include a range of Vendor considerations, defining the strategic marketing approach the NHS TDA wishes to adopt in securing best value from the 'sale'. This may include issues of timing and commissioner strategy (e.g. service reconfiguration).

Gateway 3 is the decision to proceed with a Preferred Solution, after selection of the procurement route. This would consist of a Business Case including clinical and quality strategy, an LTFM, letter of commissioner and clinical support, signed Heads of Agreement and an outline implementation plan. The scale of Business Case should be proportionate to the level of intervention selected.

Gateway 4 is the decision to implement the Preferred Solution, after all due diligence, legal and commercial and external review (e.g. by Monitor, OFT) has been concluded. It includes finalised Contract Terms or a Transactions Agreement setting out the funding requirements for the transaction. This is equivalent to a 'Full Business Case' described in DH Transactions Manual.

That business case must demonstrate that the expected benefits included in Gateway 2 have been realised and that a robust and achievable mobilisation plan and benefits realisation plan is in place. It should also ensure that there are provisions for contract management of the agreed solution and that the proposed solution can be shown to provide better quality care.

Public and commissioner engagement

Active commissioner and stakeholder engagement is the cornerstone of successful transactions. The NHS TDA is committed to substantive commissioner engagement at each Gateway of the transaction process and will discuss any proposed transactions with the NHS Commissioning Board. This is as true at Gateway 1 (the need for a transaction) as it is at Gateway 4 (signing off the resource implications of a transaction).

The case for a transaction must always be based on the premise that it will improve clinical quality and patient safety; the 'business model' and clinical strategy behind a transaction needs to articulate these benefits and to sit comfortably with local commissioning strategies.

Also, whilst it is clear that the NHS TDA has a duty as vendor in managing the process and ensuring value for money, the transaction may require some degree of transitional support funding (where the Vendor's trust is financially challenged and whilst it is being 'recovered'). Such revenue funds can only come from commissioners.

Costs

NHS Trusts are expected to self-fund the development costs associated with the achievement of FT status. Similarly, where it is decided that a Trust cannot

achieve FT status itself, the funds that would have been used for this purpose should be used to conduct the transaction. The recovery of the costs to the successful bidder in a completed transaction are likely to be incorporated into the bidding process.

Heads of Terms (at Gateway 3) and Transactions Agreement (at Gateway 4) will be signed by the Vendor (TDA), the acquirer/merger partner/franchise operator and by the NHS Commissioning Board, on behalf of commissioners.

Types of transaction

A full and detailed explanation of the different forms of transactions is contained within the DH Transactions Manual. A transaction occurs when assets and liabilities or a business/service transfer takes place. The table below summarises the main forms of transaction.

If NHS Trusts are unable to deliver high quality, safe sustainable services by themselves then the NHS TDA will particularly consider the following potential options:

- management contract;
- operating competition;
- merger with an NHS Trust or acquisition by an existing Foundation Trust; or
- a divestment or demerger.

Types of transaction	Description
Trust – trust mergers	These are 'statutory mergers' and take place when two NHS Trusts come together to form a new, merged entity
FT acquisition	When an NHS FT 'takes over' the running of assets previously owned by an NHS Trust
Trust acquisition	A much larger NHS Trust could 'take over' a much smaller NHS Trust, retaining the identity of the larger NHS Trust
Operating franchises	A long-term contract or franchise could be awarded to the private sector to run services previously delivered by an NHS Trust
Management contracts	A short-term contract could be awarded to another NHS organisation or to the private sector to run an NHS facility
Divestments	An NHS Trust could decide to sell assets it owns to another organisation, yet remain viable as an NHS Trust
Demergers	An NHS Trust could decide to split its assets into two or more parts, with each part representing a viable solution.

A summary of the key attributes and pros and cons of each of these intervention options is set out in **Appendix 7**. All are designed to bring in new ideas into existing organisations. Moreover, the process of bringing in these new ideas can be used to develop plans to improve quality, meet financial challenges and support the evolution of local services.

Further information

Appendix 7 sets out the following additional information for NHS Trusts seeking to understand the transactions process:

- detail on the benefits and risks associated with the main types of transaction likely to affect NHS Trusts;
- detail on the role of different stakeholders in the process of developing and approving an organisational transaction;
- details on the processes, requirements and outputs, as well as best-practice tools; and
- further information on the Office of Government Commerce Gateway Reviews, details on the resource pack the NHS TDA is developing to support different types of transactions and a stakeholder communication strategy.

Enhancing sustainability – the model for approving significant capital schemes

The NHS TDA has the responsibility for approving all significant capital investments proposed by NHS Trusts up to a limit that has been delegated to the NHS TDA by the Department of Health – a key element of helping to ensure NHS Trusts are sustainable in the medium-to-long term.

Significant capital schemes can have a substantially positive impact on the way in which care is delivered: enabling innovation and new ways of working to modernise health services and ensure the quality of care is of the highest level.

Equally, when handled badly, capital schemes can impact negatively on the future finances of organisations, and if poorly planned can sometimes fail to deliver all the proposed benefits of the initial proposal.

Therefore, in assessing proposals, we will consider whether they are consistent with the Trust's clinical strategy and ensure that the proposal clearly demonstrates a high level of engagement with clinical staff.

We will look closely at the quality, safety, productivity, affordability, value for money and workforce implications associated with any investment proposal, as well as ensuring that any applications help ensure the sustainability of the wider local health economy.

Importantly, we will also closely examine whether the NHS Trust has the resource and capacity to deliver the investment programme it is proposing within a realistic timescale.

This guidance provides an overview of how NHS Trusts can expect the capital investment business case approval process and the delegated limits for NHS Trusts to be managed by the NHS TDA.

Detailed guidance for NHS Trusts regarding the NHS capital regime, capital business case approvals and funding application process is currently being produced and will be issued separately. The detailed operating guidance covers:

- background and details of the NHS capital regime including technical financial guidance;
- delegated limits for NHS Trusts for capital investment business case approvals. NHS Trusts have the authority to approve capital business cases within agreed thresholds before NHS TDA approval is required. The delegated limits of NHS Trusts have been revised by the NHS TDA;
- a summary of the expected information requirements that NHS Trusts must comply with when submitting capital business cases to the NHS TDA for approval. All NHS Trusts will be required to submit a business case and a business case checklist in a prescribed format;

- outline timescales for NHS TDA approval of any capital investment and property transaction business cases.

The revised delegated limits and capital business case approvals process will replace all previous guidance put in place by Strategic Health Authority Clusters with effect from 1 April 2013.

The NHS Trust Board Role in Capital Investment

The NHS TDA will require assurance that a capital investment business case has been through an appropriate level of scrutiny and governance within the NHS Trust proposing the investment, before the case is submitted to the NHS TDA. The NHS TDA will ask the NHS Trust to demonstrate that:

- the investment proposal is consistent with the NHS Trust's clinical strategy and supports the provision of high quality care;
- the investment proposal demonstrates a high level of engagement with clinical staff and the use of appropriate staff and patient feedback;
- the quality, safety, productivity, affordability, value for money and workforce implications associated with the investment proposal are robust, well thought through and described within the business case;

- there is a clear and credible approach to enhancing the delivery of patient care and performance standards;
- issues relating to the sustainability of the wider local health economy have been addressed and the proposed solution adequately assists the health economy in managing present and future issues;
- the NHS Trust has the resource and capacity to deliver the investment programme within a realistic timeframe.

The NHS TDA will require evidence that the proposed scheme has had an appropriate level of NHS Trust Board scrutiny before the capital investment business case is reviewed by the NHS TDA.

The NHS TDA will be keen to see innovative business cases which demonstrate an NHS Trust has put patients at the centre of their investment proposal with the aim of delivering the highest standards of NHS care.

In addition, the NHS TDA will seek assurance that the NHS Trust has subjected the business case to an appropriate governance and clinical engagement process and that the proposed investment is affordable and represents good value for money to the taxpayer.

General principles

The NHS TDA requires NHS Trusts to adhere to the Department of Health (DH) Capital Investment Manual¹ in the production of capital investment business cases.

In line with the DH Capital Investment Manual the NHS TDA requires that all business cases are based upon the five case model for business case production and for each investment proposal will cover the following aspects:

- strategic;
- economic;
- financial;
- commercial;
- management.

In addition, NHS Trusts will be required to submit a completed business case checklist on a consistent basis to the five case model that has been signed off by the Board of the NHS Trust.

The business case checklist can also be used as an effective tool for NHS Trusts to provide assurance on their own internal governance processes. If completed to a comprehensive standard it will support the NHS TDA review process and ensure the exercise is completed in a timely manner.

¹NHS Trusts are asked to note that the Capital Investment Manual differs to the guide to NHS Trusts described above as the Capital Investment Manual describes best practice in business case production and does not cover the wider NHS capital regime, NHS Trust delegated limits or the process for NHS TDA business case approval.

Delegated limits

The delegated limits for capital investment and property transaction approvals in the NHS have previously been set by the Department of Health. From 1 April 2013 the NHS TDA will be responsible for setting the delegated limits of NHS Trusts and the review and approval of NHS Trust capital investment business cases up to the value delegated to the NHS TDA by the Department of Health.

The levels of authorisation for NHS Trust capital investment and property transactions contained within this paper confirm the levels of delegated authority NHS Trusts will have post 1 April 2013. This paper also outlines the process that proposals for capital investment and property transactions will be subject to.

The purpose of the process is to ensure that an appropriate level of NHS Trust and NHS TDA scrutiny has been undertaken before significant amounts of public resource are committed.

NHS Trusts will have delegated authority to approve capital investment business cases with a financial value for the proposed capital investment or property transaction up to a value of £5 million or 3% of turnover whichever is the lower.

The NHS TDA Director of Finance will have delegated authority to approve business cases between £5 million, or 3% of turnover whichever is the lower, and up to a value of £10 million.

Decisions regarding approval of business cases for capital investment and property transactions over a threshold of £10 million and up to a threshold of £25 million for NHS Trusts will be made by the NHS TDA Capital Investment Group.

Decisions regarding approval of business cases for capital investment and property transactions over a threshold of £25 million for NHS Trusts will be made by the NHS TDA Capital Investment Group but full approval will be required by the NHS TDA Board.

The NHS TDA will have powers of approval for NHS capital business cases up to a £50 million limit delegated by the Department of Health to the NHS TDA. Any capital business cases over £50 million will require a further stage of approval by the DH before submission to HM Treasury.

Turnover will be measured based upon the turnover of an NHS Trust within its financial accounts for the previous financial year.

The authorisation levels for NHS Trusts are summarised in Table 1 below:

Table 1 NHS Trust and NHS TDA Delegated Limits

Financial Value of the Capital Investment or Property Transaction	Approving Person or Group
Up to £5 million or 3% of turnover whichever is the lower ²	NHS Trust Board
Between £5 million, or 3% of turnover whichever is the lower, and £10 million	NHS TDA Director of Finance
£10 million to £25 million	NHS TDA Capital Investment Group
£25 million to £50 million	NHS TDA Capital Investment Group and NHS TDA Board
Over £50 million	NHS TDA Capital Investment Group and NHS TDA Board and the Department of Health

²Turnover will be measured using the Trusts previous years financial accounts turnover figure.

Irrespective of the delegated limits set out in this document, the NHS TDA may refer any NHS Trust capital investment scheme or property transaction that they deem to be novel and contentious, regardless of size, to the NHS TDA Capital Investment Group or NHS TDA Board for a view and/or approval decision.

In addition, it should be noted that autonomy is earned and NHS Trusts are asked to note that Trusts reporting a year end deficit in its most recent audited accounts, forecasting an outturn deficit for the financial year or with an in-year deficit should note that at the discretion of the NHS TDA a Trust's delegated limits can be lowered. Where this applies Trusts will be notified in writing by the NHS TDA.

NHS TDA Capital Investment and Property Transaction Business Case process

Key Stage Documentation

At each key stage of the business case process all capital investment business case proposals must be produced using the standard five case model. The review process will be completed on a consistent basis using the appropriate business case checklist.

It is good practice for NHS Trusts to produce a Strategic Outline Case (SOC) for significant business cases for their own governance and assurance purposes. It will not however be

necessary for NHS Trusts to submit SOCs to the NHS TDA for business cases with an investment value of under £10 million, unless specifically requested to do so. A Strategic Outline Case will however be required from NHS Trusts for business cases over £10 million.

As a minimum the NHS TDA will expect to have a Strategic Outline Case (SOC), an Outline Business Case (OBC) and Full Business Case (FBC) (or equivalent for PFI preferred solutions (i.e. PFI Appointment Business Case, PFI Confirming Business Case etc)) submitted for all business cases with a value that exceeds £10 million.

In addition, a completed generic business case checklist must also be submitted with each OBC and FBC version of the business case submitted to the NHS TDA for all business cases over the Trust's own delegated limits and up to £50m. For all major schemes in excess of £50m, that also require Department of Health sign off, there are four separate Department of Health checklists that will be required for each stage of the business case process (OBC – public funded/ PFI checklist, PFI ABC checklist, PFI CBC checklist and FBC – Public Funded checklist).

Business cases submitted to the NHS TDA must have been approved by the relevant NHS Trust Board and the NHS Trust must submit a copy of the board minute recording approval.

It is essential that any business case submitted to the NHS TDA by NHS Trusts must be congruent with the NHS Trust's Integrated Business Plan (IBP) and Long Term Financial Model (LTFM) and this will be tested as part of the business case review process.

Table 2 Business Case Key Stage Documentation

Financial Value of the Capital Investment or Property Transaction	Key Stage Documentation
Up to £5 million or 3% of turnover whichever is the lower	NHS Trust internal governance process
Between £5 million, or 3% of turnover whichever is the lower, and £10 million	OBC and FBC required
£10 million to £25 million	SOC, OBC and FBC required (or SOC, ABC, CBC equivalent for PFI) (For the purposes of this document PFI includes LIFT)
£25 million to £50 million	SOC, OBC and FBC required (or SOC, ABC, CBC equivalent for PFI)
Over £50 million	SOC, OBC and FBC required (or SOC, ABC, CBC equivalent for PFI)

Detailed guidance for NHS Trusts on the production of business cases and the key stage documentation can be found in the Department of Health Capital Investment Manual at http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/en/publicationsandstatistics/publications/publicationspolicyandguidance/dh_4119896

Separate detailed guidance that sets out the NHS TDA's expectations regarding business case key stage documentation (available on request)

Process

NHS TDA Directors of Delivery and Development and their teams will be working with a portfolio of NHS Trusts and will perform the business case review and assurance process for capital investment and property transactions for business cases submitted by NHS Trusts within their portfolio.

Directors of Delivery and Development and their teams will scrutinise the proposed project to ensure that the best possible solution is selected for the given set of circumstances.

Recommendations from the Directors of Delivery and Development will be made for capital business case investment proposals put forward by NHS Trusts within their portfolio to the NHS TDA approving officer or group in line with the NHS TDA approvals process.

Outline Timetable for Approvals

The NHS TDA will work broadly to an eight-week approval cycle from submission of the business case by an NHS Trust to the NHS TDA to the submission of the business case to the NHS TDA Capital Investment Group.

The eight-week cycle has been devised for business cases with a financial value below £25 million. If a business case has a financial value in excess of £25 million additional time will be added to the process in order to secure NHS TDA Board approval and DH/ HM Treasury approval where required.

The outline timetable is reliant upon the submission of high quality business cases to the NHS TDA for review. Where this is not the case the NHS TDA will reserve the right to stop the business case review process 'clock' until satisfactory responses are provided by the Trust and in such circumstances the eight-week review process will be extended.

Capital Investment Funding

As is the case within the existing NHS funding arrangements capital investment loans will be available to NHS Trusts to support capital investment.

Applications for capital investment loans will need NHS TDA review and approval before they are passed on to the DH for final approval. Details of the NHS TDA's process for NHS Trusts to access capital investment loans is set out in a separate NHS TDA financing guidance (available upon request).

NHS Trusts are asked to note that new loans will not automatically be granted and will be considered on a case by case basis by the NHS TDA before submission to the DH for final approval.

Capital Planning

Planning for Capital Investment and Property Transaction Business Cases

NHS Trusts are required to submit five year capital plans as part of the operating plan process. This information must be included in an NHS Trust's final Trust Financial Management System Plan that is submitted in April each year.

A key part of the submission is an outline schedule of all planned capital investment and property transaction business cases that exceed the Trust's own delegated limits and the anticipated timescale for when they will be submitted to the NHS TDA.

Where a Trust submits a business case that was not identified within the annual planning cycle (i.e. unplanned), an additional strategic intent document relating to the business case will also be required. The strategic intent document must specify the following:

- the reason / rationale for the investment;
- how the business case fits with the NHS Trust's strategic plan;
- why the business case was not included within the Trust's original financial plan;
- the estimated value of the investment;
- timescales for the investment;
- procurement process and risks of not proceeding with the business case.

Unplanned business cases will not be considered by the NHS TDA until the strategic intent document has been received and signed off by the NHS TDA.

Planning for Loans

It is expected that every NHS Trust will have an up to date Long Term Financial Model (LTFM) and that this model is kept up to date on a quarterly basis. On this basis any planned loans should be anticipated and modelled in the Long Term Financial Model.

All loan applications for planned loans of any type should also be included within an NHS Trust's annual operating planning forms (Trust Financial Management System) that are submitted to the NHS TDA between January and April each year.

This information will be used to inform discussion with the NHS TDA and DH regarding loan requirements for the forthcoming financial year. Trusts should not assume loans will be made available until an agreement has been reached and the NHS Trust has been informed in writing that the loan has been agreed.

Unplanned loan requests that emerge in-year will follow an escalating process. The NHS TDA will consider any applications on a case-by-case basis.

Creating the conditions for improved quality of care – the service change model

The NHS is adapting to new patterns of care, using leading edge technology and care pathways to treat people more quickly, more safely and in more convenient settings: developing new services, modernising facilities and saving lives.

Service change is an important part of enabling NHS Trusts to reform and modernise the care they provide – delivering major service improvement for patients as well as value for money for the taxpayer.

Delivered well, service change – designed and supported by clinicians, staff and patients – can form a key part of the journey toward enhancing quality and delivering sustainability.

The NHS TDA will want to ensure that it has early sight of any proposals for service change, and will want to see clear evidence of the active participation of commissioners in the local assurance process, using a service change readiness assessment.

Early in the 2013/14 financial year, the Department of Health will publish a national review with recommendations about how service change should be delivered in the future. The NHS TDA will then issue its guidance to NHS Trusts on the approvals process for service change once that review has been concluded.

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Appendix 1: Oversight – Routine Quality and Governance indicators

Indicators in **blue** are in addition to mandatory and Monitor Risk Assessment Framework measures in support of the delivery of the TDA oversight function.

Acute NHS Trusts

Category	Indicator
CQC Concerns	<ul style="list-style-type: none"> Warning notice Civil and/or criminal action
Access metrics	<ul style="list-style-type: none"> Referral to treatment within 18 weeks <ul style="list-style-type: none"> Admitted 90% in 18 weeks Non admitted 95% in 18 weeks Incomplete 92% in 18 weeks Over 52 week waiters Number of diagnostic tests waiting longer than 6 weeks Cancelled operations re-booked within 28 days Urgent operation being cancelled for the second time A&E waits (4 hours) 62 day wait for first treatment <ul style="list-style-type: none"> 62 day urgent GP referral to treatment from screening 62 day urgent GP referral to treatment for all cancers 31 day wait for second or subsequent treatment <ul style="list-style-type: none"> 31 day second or subsequent treatment (surgery) 31 day second or subsequent treatment (drug) 31 day second or subsequent treatment (radiotherapy) 31 day wait from diagnosis to first treatment Two week wait referral to date first seen <ul style="list-style-type: none"> 2 week GP referral to 1st outpatient, cancer 2 week GP referral to 1st outpatient – breast symptoms

Category	Indicator
Outcomes metrics	<ul style="list-style-type: none"> 30 day emergency readmissions Incidence of MRSA Incidence of C. Difficile Medication errors causing serious harm Admissions of full-term babies to neo natal care Harm free care (pressure sores , falls, C-UTI and VTE) Serious incidents Never events eColi + MSSA cases C-sections rates Maternal deaths SHMI HSMR VTE risk assessment CAS Alerts WHO surgical checklist compliance
3rd party reports	Any relevant report including safeguarding alerts, serious case reviews, Ad-hoc reports from MPs, GMC, Ombudsman, Commissioners, litigation, etc
Quality governance indicators	<ul style="list-style-type: none"> Patient satisfaction (friends and family) Board turnover Sickness/absence rate Proportion temporary staff – clinical and non-clinical Staff turnover Nurse:bed ratio % nurses registered nurses Mixed sex accommodation Patient and carer voice Complaints % staff appraised

Appendix 1: Oversight – Routine Quality and Governance indicators

Indicators in blue are in addition to mandatory and Monitor Risk Assessment Framework measures in support of the delivery of the TDA oversight function.

Mental Health NHS Trusts

Category	Indicator
CQC Concerns	<ul style="list-style-type: none"> Warning notice Civil and/or criminal action
Access metrics	<ul style="list-style-type: none"> Referral to treatment within 18 weeks Care Programme Approach (CPA) patients <ul style="list-style-type: none"> Receiving follow-up contact within 7 days of discharge Having formal review within 12 months The proportion of those on Care Programme Approach (CPA) for at least 12 months who had a CPA review within the last 12 months Admissions to inpatient services who had access to Crisis Resolution/ Home Treatment teams Meeting commitment to serve new psychosis cases by early intervention teams Admissions to adult facilities of patients who are under 16 years of age Minimising mental health delayed transfers of care Access to liaison teams in A&E
Outcome metrics	<ul style="list-style-type: none"> Expected recovery following completion of psychological therapy treatment Harm free care (pressure sores, falls, C-UTI and VTE) Serious incidents Never events Certification against compliance with requirements regarding access to health care for people with a learning disability CAS alerts
3rd party reports	Any relevant report including safeguarding alerts, serious case reviews, Ad-hoc reports from MPs, GMC, Ombudsman, Commissioners, litigation, etc.
Quality governance indicators	<ul style="list-style-type: none"> Measure of patient experience Measure of carer experience Board turnover Sickness/absence rate Proportion temporary staff – clinical and non-clinical Staff turnover Mixed sex accommodation Patient and carer voice Complaints % staff appraised

Indicators in blue are in addition to mandatory and Monitor Risk Assessment Framework measures in support of the delivery of the TDA oversight function.

Community NHS Trusts

Category	Indicator
CQC Concerns	<ul style="list-style-type: none"> Warning notice Civil and/or criminal action
Access metrics	<ul style="list-style-type: none"> Referral to treatment within 18 weeks Delayed transfers of care
Outcome metrics	<ul style="list-style-type: none"> Incidence of MRSA Incidence of C.Difficile E Coli and MSSA cases Harm free care (pressure sores, falls, C-UTI and VTE) Serious incidents Never events VTE risk assessments
3rd party reports	Any relevant report including safeguarding alerts, serious case reviews, ad-hoc reports from MPs, GMC, Ombudsman, Commissioners, litigation, etc.
Quality governance indicators	<ul style="list-style-type: none"> Patient satisfaction Mixed sex accommodation Board turnover Sickness/absence rate Proportion temporary staff (clinical and non-clinical) Staff turnover Nurse:bed ratio % nurses registered nurses Complaints % staff appraised Patient and carer voice

Appendix 1: Oversight – Routine Quality and Governance indicators

Indicators in blue are in addition to mandatory and Monitor Risk Assessment Framework measures in support of the delivery of the TDA oversight function.

Ambulance NHS Trusts

Category	Indicator
CQC Concerns	<ul style="list-style-type: none"> Warning notice Civil and/or criminal action
Access metrics	<ul style="list-style-type: none"> Category A call – emergency response within 8 minutes comprising <ul style="list-style-type: none"> Red 1 calls Red 2 calls Category A call – ambulance vehicle arrives within 19 minutes
Outcome metrics	<ul style="list-style-type: none"> Serious incidents Never events
3rd party reports	Any relevant report including safeguarding alerts, serious case reviews, ad-hoc reports from MPs, GMC, Ombudsman, Commissioners, litigation, etc.
Quality governance indicators	<ul style="list-style-type: none"> Patient satisfaction Board turnover Sickness/absence rate Proportion temporary staff – clinical and non-clinical Staff turnover Complaints % staff appraised Patient and carer voice

Appendix 2: Oversight – Other Quality and Governance indicators

Category	Examples (not exhaustive)
Clinical standards	<ul style="list-style-type: none"> A&E consultant cover 24 x 7 Emergency paediatrics consultant rota Obstetrics consultant cover 24 x 7 Midwife cover
Staff satisfaction	<ul style="list-style-type: none"> Staff survey – friends and family test, material changes Staff survey – staff satisfaction, material changes
Board capability and capacity	<ul style="list-style-type: none"> Board observations BGAF MQGF
Licence terms	<ul style="list-style-type: none"> Choice, competition and integration terms (self-certification)

Appendix 3: Oversight – Financial indicators

Measures of in-year financial delivery

Indicator No.	Indicator description
1a	Bottom line I&E position
1b	Year to date actual I&E compared to plan
1c	Forecast I&E compared to plan
2a	Actual efficiency compared to plan split recurring / non recurring
2b	Year to date actual efficiency recurring / non recurring compared to plan
2c	Forecast recurring efficiency / non recurring compared to plan
3	Forecast underlying revenue position compared to plan for the year
4	Forecast year end charge to capital resource limit compared to plan
5	Has Trust accessed a TBL or PDC for liquidity during 2013/14?
6	NHS Trust is in receipt of Distress Financing

Measures of progress towards FT status

Indicator No.	Indicator description
Monitor Compliance Framework	
1	EBITDA achieved (% of plan)
2	EBITDA margin, %
3	Net return after financing, %
4	I&E surplus margin net of dividend, %
5	Liquidity ratio days
	Combined Financial Risk Rating
Monitor Risk Assessment Framework – Continuity of Services	
1	Liquidity Days
2	Capital Services Capacity
3	Combined Risk Rating

Appendix 4: Monthly self-certification requirements

Board statements

For each statement the Board is asked to confirm the following:

For CLINICAL QUALITY, that		Response	
1	The Board is satisfied that, to the best of its knowledge and using its own processes and having had regard to the TDA's oversight (supported by Care Quality Commission information, its own information on serious incidents, patterns of complaints, and including any further metrics it chooses to adopt), the trust has, and will keep in place, effective arrangements for the purpose of monitoring and continually improving the quality of healthcare provided to its patients.		
2	The board is satisfied that plans in place are sufficient to ensure ongoing compliance with the Care Quality Commission's registration requirements.		
3	The board is satisfied that processes and procedures are in place to ensure all medical practitioners providing care on behalf of the trust have met the relevant registration and revalidation requirements.		
For FINANCE, that		Response	
4	The board is satisfied that the trust shall at all times remain a going concern, as defined by relevant accounting standards in force from time to time.		
For GOVERNANCE, that		Response	
5	The board will ensure that the trust remains at all times compliant with has regard to the NHS Constitution.		
6	All current key risks have been identified (raised either internally or by external audit and assessment bodies) and addressed – or there are appropriate action plans in place to address the issues – in a timely manner.		
7	The board has considered all likely future risks and has reviewed appropriate evidence regarding the level of severity, likelihood of it occurring and the plans for mitigation of these risks.		
8	The necessary planning, performance management and corporate and clinical risk management processes and mitigation plans are in place to deliver the annual operating plan, including that all audit committee recommendations accepted by the board are implemented satisfactorily.		
9	An Annual Governance Statement is in place, and the trust is compliant with the risk management and assurance framework requirements that support the Statement pursuant to the most up to date guidance from HM Treasury (www.hm-treasury.gov.uk).		
10	The board is satisfied that plans in place are sufficient to ensure ongoing compliance with all existing targets (after the application of thresholds) as set out in the relevant GRR; and a commitment to comply with all known targets going forwards.		
11	The trust has achieved a minimum of Level 2 performance against the requirements of the Information Governance Toolkit.		
12	The board will ensure that the trust will at all times operate effectively. This includes maintaining its register of interests, ensuring that there are no material conflicts of interest in the board of directors; and that all board positions are filled, or plans are in place to fill any vacancies.		
13	The board is satisfied that all executive and non-executive directors have the appropriate qualifications, experience and skills to discharge their functions effectively, including setting strategy, monitoring and managing performance and risks, and ensuring management capacity and capability.		
14	The board is satisfied that: the management team has the capacity, capability and experience necessary to deliver the annual operating plan; and the management structure in place is adequate to deliver the annual operating plan.		
Signed on behalf of the Trust:		Print name	Date
CEO			
Chair			

Appendix 5: Role of the NHS TDA in executive HR decisions by NHS Trusts

- 1 This appendix sets out the role that the NHS Trust Development Authority (NHS TDA) will play in overseeing Executive HR issues in NHS Trusts now that the NHS TDA has taken on its full role from 1 April 2013. Clarity on these issues is important to ensure that NHS Trusts make appropriate decisions in the interests of patients and taxpayers.
- 2 SHAs previously played an oversight role on NHS Trust Executive HR issues, particularly relating to Very Senior Managers (CEOs and Directors) and this responsibility has transferred to the NHS TDA. Areas overseen by SHAs included executive appointments, VSM pay for ambulance and community NHS Trusts, performance ratings and performance related pay, and severance arrangements. The NHS TDA will take on these responsibilities as part of its broad oversight of NHS Trusts as set out in Delivering High Quality Care for Patients: The Accountability Framework for NHS Trust Boards.
- 3 The detail of how these roles will be transferred to and actioned by the NHS TDA is outlined below. The NHS TDA has a small team of HR staff, part of whose role will be to support this function. Contact details for the team are included in this appendix and all queries should be directed to this team. Further details of the processes will be shared with NHS Trust HR Directors later in April 2013.

Appointments

- 4 **Role undertaken by SHAs:** For appointments to the most senior posts in NHS Trusts, senior staff in SHAs acted as assessors on panels for board positions in NHS Trusts.
- 5 **NHS TDA role:** NHS TDA will continue to have an oversight role on NHS Trust board appointments and senior staff in NHS TDA will act as external assessors on board appointment panels.
- 6 **Action:** NHS Trusts to provide information to NHS TDA when board vacancies arise including details of the appointment process. NHS TDA will then advise of the external assessor who will join the selection panel.

Remuneration

- 7 **Role undertaken by SHAs:** SHAs undertook the required 'grand-parent' role in ensuring that in Ambulance Trusts and Community Trusts the appropriate spot rate was applied and in approving any discretionary additions (recruitment and retention premia and additional responsibilities allowances). Any payments above £142,500 must be referred to DH for Chief Secretary to the Treasury approval. NHS Trusts are free to adopt the principles of the arrangements but are not covered by the pay scales and did not require 'grand-parent' approval for senior pay from the SHA.
- 8 **NHS TDA role:** NHS TDA will undertake the 'grand-parent' role for Ambulance Trusts and Community Trusts, as such a role is still required through the Pay Framework to oversee Executive pay in those organisations. There will be no NHS TDA role in determination of VSM salaries in other Trusts but NHS TDA will share available pay data where requested when Trusts are setting pay points.
- 9 **Action:** Ambulance and Community Trusts will be requested to provide details of pay for VSM staff.

Performance Reviews

- 10 **Role undertaken by SHAs:** Oversight of performance payments to Ambulance Trusts and Community Trusts. Some SHAs also oversaw performance reviews for other NHS Trusts.
- 11 **NHS TDA role:** NHS TDA will act as grandparent for Ambulance Trusts and for Community Trusts. NHS TDA will also have an oversight role in the reviewing of performance ratings for Chief Executives of all NHS Trusts.
- 12 **Action:** Trusts will be advised of detail of the NHS TDA role in reviewing performance ratings in late April 2013.

Severance

- 13 **Role undertaken by SHAs:** NHS Trusts were required to seek guidance from the SHA if termination of a contract (including redundancy) of a CEO or Director is being considered. Termination payments for these senior staff required SHA Remuneration Committee approval. As a general rule SHAs were required to see evidence that the Trust had obtained the advice of its auditors, taken legal advice, demonstrated any payment represents value for money and is in the public interest, and evidenced why local disciplinary or capability procedures were not the appropriate vehicles for resolving the situation, if the case was a conduct or performance one. Where compromise agreements were proposed, SHAs reviewed these.
- 14 SHA remuneration committees approved severance payments (including redundancy) to staff below director level that exceeded certain thresholds. These thresholds varied between SHAs.
- 15 SHAs approved non-contractual payments that required Treasury approval for staff at all levels.
- 16 **NHS TDA role:** NHS TDA will undertake the role of providing guidance to NHS Trusts and of approving proposed severance payments (including redundancy) to VSM staff, after consideration by the Remuneration Committee of the relevant organisation. In addition, NHS TDA will approve any proposed severance payments (including redundancy) above £50k to staff below director level. The NHS TDA will approve any non-contractual payments prior to seeking Treasury approval. The NHS TDA will also review any proposed compromise agreements relating to any of the above severance arrangements.
- 17 **Action:** NHS Trusts to advise of any severance cases currently in the system (including where severance terms have been agreed but the individual's contract is not yet terminated) and make contact with the HR team at NHS TDA as soon as any potential difficulties arise that may lead to a severance process.

Other

- 18 **Role undertaken by SHAs:** A Mutually Agreed Resignation Scheme (MARS) is a form of voluntary severance which supports employers by creating job vacancies which can be filled by redeployment of staff from other jobs or as a suitable alternative job for those facing redundancy. In accordance with Agenda for Change s20.22 SHAs were required to agree any proposed MARS schemes that Trusts wished to run and agreed individual cases in some instances.
- 19 **Role for the NHS TDA:** Agenda for Change has been amended to require NHS TDA and HM Treasury to approve such schemes in future.
- 20 **Action:** Trusts should contact the NHS TDA for approval of any MARS schemes prior to seeking HM Treasury approval.

Contact details of NHS TDA HR team

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Appendix 6: FT applications approvals

Stage 1: Diagnosis and due diligence

Action	Requirements/ other information		Practices/ tools to be used	Output
What the trust will do				
Undertake self-assessments and begin production of key documents in line with the <i>Applying for NHS Foundation Trust Status: Guide to Applicants</i>	<ul style="list-style-type: none"> Begin production of IBPs/LTFMs including initial CIP plans and associated Quality Impact Assessment reports Undertake self-assessments against: <ul style="list-style-type: none"> Board Governance Assurance Framework (BGAF) including development of case studies; and Monitor's Quality Governance Framework Quality indicator dashboard and related intelligence including complaints Workforce strategy / assurance reports. Discussion with Trust Director of Workforce and ND/MD Staff / clinical engagement and culture of the organisation 		<ul style="list-style-type: none"> BGAF processes and documentation to be used Latest Monitor Quality Governance Framework to form the basis of self-assessment Standard template to be developed to be used by TDA for reviewing and providing feedback on IBPs Draft IBPs and LTFMs submitted to TDA will be reviewed by the TDA within a maximum of 4 weeks of receipt In addition, a feedback meeting with Trust Chair and CEO and Medical and Nursing Directors following review of key drafts will be led by the TDA 	<ul style="list-style-type: none"> Completed self-assessments against BGAF and Monitor's Quality Governance Framework in place Clear understanding of the Trust's quality dashboard profile. Action plans put into place where necessary Initial drafts of IBPs/LTFMs including initial CIP plans in place The Trust would be expected to develop action plans where there are quality issues or concerns
Proceed to third party review of Trust self assessment of Board Governance Assurance Framework (BGAF) and prepares response to findings	<ul style="list-style-type: none"> Independent view given against BGAF TDA to review and provide feedback on responsive plan 		<ul style="list-style-type: none"> BGAF processes and documentation to be used. (Link provided at Annex H) TDA to triangulate evidence provided in BGAF report with own assessment to inform consolidated action plan 	<ul style="list-style-type: none"> Third party report shared with TDA Action plan against findings of report
Proceed to independent third party review of Trust self assessment against Monitor Quality Governance assessment framework requirements. Prepares response to findings	<ul style="list-style-type: none"> Independent third party review of Trust self certification and assessment of Monitor Quality Governance Framework. QGF review team must have appropriate expertise and be signed off by the CQD Trust and TDA to agree Independent third party reviewer and gain assurance that the appropriate level of clinical expertise has been secured 		<ul style="list-style-type: none"> Needs to occur towards the ends of the diagnosis phase 	<ul style="list-style-type: none"> Third party report shared with the TDA Trust action plan against findings of report. Report and action plan submitted the TDA for review and feedback
Trust undertakes Historical Due Diligence (HDD) stage 1 and prepares response to findings	<ul style="list-style-type: none"> Review of Trust undertaken by independent accounting firm 		<ul style="list-style-type: none"> The purpose and scope of HDD 1 is for a preliminary review and financial reporting procedures report covering business planning, financial reporting procedures and specification of analysis required for the HDD at stage 2 	<ul style="list-style-type: none"> HDD 1 report delivered and shared with the TDA Trust action plan developed in response and shared with the TDA Indicative date set for HDD 2

Stage 1: Diagnosis and due diligence (continued)

Action	Requirements/ other information		Practices/ tools to be used	Output
What the trust will do (continued)				
Trust submit prepare and submit documents and supporting strategy for public consultation on the proposed Foundation Trust application	<ul style="list-style-type: none"> TDA agree to Trust going to consultation including signing-off documentation Documentation and go ahead to be signed-off by TDA Final public consultation document (including Governance rationale) and associated communications plans as agreed by the Trust Board 			<ul style="list-style-type: none"> Sign off documents and supporting strategy for public consultation on proposed Foundation Trust application
What the TDA will do				
TDA Portfolio Team introductory meeting with Chair and CEO, Medical and Nurse Directors and FT director of the applicant Trust	<ul style="list-style-type: none"> Discussion to include top level/key milestones that underpin the trajectory to Foundation Trust status Minimum of TDA Director and relevant Trust lead TDA Quality profile, risks and issues along with CQC compliance status assessed. Range of quality information triangulated included with other available intelligence including complaints 		National Quality Dashboard and related quality surveillance systems, including outputs from the relevant QSGs	<ul style="list-style-type: none"> Agreed set of detailed milestones including draft timetable and plans for IBP/LTFM submissions Agree any external support requirements
The TDA Portfolio and Quality teams to develop detailed trust quality and delivery profile which takes into account CQC and other external reports	<ul style="list-style-type: none"> Interviews with HEE, NHSCB, LETB, the CQC and, where applicable, the Local Supervising Authority Midwifery Officer TDA attendance at local and regional Quality Surveillance Groups 		<ul style="list-style-type: none"> CQC Reports Quality Accounts Quality Dashboards and related intelligence 	<ul style="list-style-type: none"> The TDA clinical quality team will conduct an internal review of quality information and associated intelligence which will inform the focus for a rapid responsive review
Initial Board interviews	<ul style="list-style-type: none"> To be undertaken in pairs by TDA team members Interviews conducted with voting members only To test the understanding of the key issues in the organisation and the ability to respond appropriately to these For both Executive and Non-Executive Directors, the interviews need to focus on: <ul style="list-style-type: none"> corporate objectives portfolio relevant/specific issues to role on board trust quality profile and risk assessment workforce strategy / assurance staff / clinical engagement and culture of the organisation 		<ul style="list-style-type: none"> Minimum of issues to be covered – details to be provided Headings for written feedback to Chair to be provided 	<ul style="list-style-type: none"> Written feedback to Chair covering broad themes

Stage 1: Diagnosis and due diligence (continued)

Action	Requirements/ other information		Practices/ tools to be used	Output
What the TDA will do (continued)				
Initial Board observation	<ul style="list-style-type: none"> To be undertaken in pairs or more dependent on issues One of the pair should have experience of working at Board level or with Boards Verbal and written feedback to Chair and CE including actions TDA to have reviewed papers ahead of Board 		<ul style="list-style-type: none"> TDA template to be completed after Board observation 	<ul style="list-style-type: none"> Written feedback to Chair (within 3 weeks of Board) and option to follow up with verbal feedback
Initial interviews with Commissioners and other purchasing organisations e.g. Local Authorities and Specialist Commissioners (where relevant)	<ul style="list-style-type: none"> Discussions to understand commissioner perspective on Trust alongside commissioners own performance To be undertaken by TDA team with Commissioner Executive representation Commissioners who represent 25% or more of income of Trust must be interviewed. Other commissioners can be interviewed in line with local requirements e.g. national centres may need to interview wider range of commissioners 		<ul style="list-style-type: none"> Minimum of issues to be covered – details to be provided 	<ul style="list-style-type: none"> TDA to have clear understanding of commissioner perspective of Trusts journey to FT status, in particular the alignment of clinical strategies and activity assumptions
Establish a clear baseline for each Trust and identify a Trust specific package of quality improvement support	<ul style="list-style-type: none"> Broad based review of quality at an NHS Trust. Led by TDA Medical and / or Nurse Director Input from quality leads at the TDA and other Directorates Informed by Board interviews, Board observation, self certification, Quality dashboard, workforce assurance tool and input from LSAMO, Healthwatch CQC, HEE and commissioners Reports / intelligence from the relevant QSG 		<ul style="list-style-type: none"> Standard list of attendees Standard agenda 	<ul style="list-style-type: none"> Written feedback to the Trust setting out areas of good practice and areas of concern. Linked to a Trust specific package of support and development to improve quality

Stage 2: Development and application

Action	Requirements/ other information		Practices/ tools to be used	Output
What the trust will do				
Formal submission of key FT application documents to TDA and preparation to inform FT readiness review meeting (includes TDA peer review)	<p>The TDA will require the following documentation to be provided by the Trust one month in advance of readiness review meeting:</p> <ul style="list-style-type: none"> • Full draft IBP and LTFM including CIPs (with evidence of QIAs) (and including initial downside modelling) • Clinical risk register • Clinical Strategy including quality account and CQC registration profile which provides assurance that the workforce is commensurate with the delivery of high quality and safe patient care • Integrated Workforce Strategy which is aligned to Quality and Financial plans • Underpinning strategies: <ul style="list-style-type: none"> – Estates – IT – Membership • Independent third party reports: <ul style="list-style-type: none"> – BGAF – Quality Governance Framework – HDD 1 • Final draft public consultation document (including Governance rationale) and associated communications plans etc as agreed by the Trust board • FT programme risk register including Board Assurance Framework • Quality Accounts • Media analysis identifying issues and actions plans 		<ul style="list-style-type: none"> • A different TDA Regional Team, as well as TDA Subject Matter Experts, will undertake a review of the key submissions and the draft readiness review recommendations 	<ul style="list-style-type: none"> • All documents in place for readiness review meeting • Peer review assessment documented
Following readiness review the Trust will develop further iterations of key documents	<p>Further iterations of key documents to be submitted to TDA including:</p> <ul style="list-style-type: none"> • Full draft IBP and LTFM including CIPs / the quality impact assessment of CIPs (and including initial downside modelling) • Clinical Strategy and performance against clinical targets • Integrated Workforce Strategy which is aligned to Quality and Financial plans • Underpinning strategies: Estates, IT, Membership • Independent third party reports: BGAF, Quality Governance Framework, HDD 1 • FT programme risk register including Board Assurance Framework 		<ul style="list-style-type: none"> • Standard template to be used for reviewing and providing feedback on IBPs 	<ul style="list-style-type: none"> • Feedback to the Trust using best practice tools • TDA to triangulate and test assurances provided

Stage 2: Development and application (continued)

Action	Requirements/ other information		Practices/ tools to be used	Output
What the trust will do (continued)				
Delivery of FT action plans by the Trust with updates to the TDA	<ul style="list-style-type: none"> On-going review of progress against the Trust specific quality improvement plan Updates on action plans including from BGAF, HDD 1, Quality Governance Framework, Quality accounts and service performance, compliance with CQC registration profile, Monitor risk ratings and Quality Indicators On-going review of the development of a rolling two-year (minimum) detailed programme of CIPs and the associated quality impact assessment of the CIPs The detail of the above to be developed as part of TDA over-sight of NHS Trusts 		<ul style="list-style-type: none"> Monitor/Audit Commission CIP guidance to inform CIP development 	<ul style="list-style-type: none"> Feedback to Trusts as necessary Inform assurance of FT against FT programme deliverables
What the TDA will do				
TDA MD and ND will conduct a Clinical Quality Review	<p>TDA MD and ND will:</p> <ul style="list-style-type: none"> meet with CEO and Exec Team interview MD and ND of the Trust undertake a site visit 		<ul style="list-style-type: none"> Standard agenda Follow NQB Rapid Responsive Review guidance where appropriate 	Assurance to the TDA board
Observe Board and Trust Board sub-committees including Finance and Quality sub-committees	<ul style="list-style-type: none"> To be undertaken in pairs or more dependent on issues One of the pair should have experience of working at Board level or with Boards Verbal and written feedback to Chair, CEO, Medical and Nurse Directors including actions TDA to have reviewed papers ahead of Board 		<ul style="list-style-type: none"> Template to be completed after Board observations 	<ul style="list-style-type: none"> Written feedback to Chair (within 3 weeks of Board) and option to follow up with verbal feedback To inform Board to Board meeting and decision to submit FT application to Monitor

Stage 2: Development and application (continued)

Action	Requirements/ other information		Practices/ tools to be used	Output
What the TDA will do (continued)				
Readiness review meeting will be held with the Trust Board after the introductory meeting with Chair and CEO, Medical and Nursing Directors and FT Director	<ul style="list-style-type: none"> To undertake formal review of progress made since introductory meeting Developmental Board to Board experience for Trust Board The whole voting Trust board is required at the meeting The readiness review meeting will include from the TDA the Director of Delivery and Development, two Portfolio Directors (one from across the TDA), the Clinical Quality Director and Business Support Director Signal move to the assurance phase of the process 		<ul style="list-style-type: none"> Standard assurance report to be completed to form basis of meeting. Template for readiness review questions to be used 	<ul style="list-style-type: none"> Review of key documents including IBP/LTFM Clinical/Quality Accounts and underpinning strategies Written feedback to Trust on meeting IBP/LTFM aligned Demonstration of viability under downside conditions, including meeting authorisation criteria Quality, finance and governance integrated throughout IBPs/LTFMs Confirm the Trust is ready to move to Assurance and sign-off phase OR Trust deemed not ready to move forward and action plans and escalation activities agreed Confirm date for HDD 2 Additional support identified
TDA agree to HDD2 commencing	<ul style="list-style-type: none"> TDA to approve for Trust to commence HDD2 TDA Finance Director and Director of Delivery and Development to take the decision 		<ul style="list-style-type: none"> HDD2 needs to be arranged in advance (provisional date set after HDD 1) The purpose and scope of HDD 2 is that prior to TDA support, production of a historical due diligence report including an update on financial reporting procedures and business plan assumptions. 	<ul style="list-style-type: none"> HDD2 report delivered Action plan from Trust

Stage 3: Assurance and approval

Action	Requirements/ other information		Practices/tools to be used	Output
What the trust will do				
<p>Trusts make final submissions of key products to inform TDA sign-off of FT application one month before the final board to board meeting.</p> <p>Applications are to be full and final submissions.</p> <p>Incomplete or late submissions will be viewed as symptomatic of poor governance and escalated.</p>	<p>Following products to be submitted to TDA:</p> <ul style="list-style-type: none"> • IBP/LTFM and other appendices (including updated downside scenarios and detailed mitigations and workforce strategy / plans) and including minimum 2 years of detailed CIP plans to include relevant QIAs • Assurance that the Trust has a workforce fit for purpose, i.e. capable of providing high quality / safe care • Quality Accounts, auditor's opinions and progress with Francis action plan • Trusts to submit letters of stakeholder support from: Quality Surveillance Groups, LATs, Local CCGs, HWB; LETBs; Deaneries; PHE; local Health Watch; NHS LA; Local Midwifery Council; Local HOSCs, Local Partnership Forum • Evidence of delivery against actions plans on HDD, BGAF and quality governance and performance. (TDA may ask for external assurance of evidence) • Letter from Trust solicitors confirming constitution in line with FT legislative requirements • Trust CEO letter of declaration that with regard to their duty of good faith they have disclosed all relevant information • Chair to confirm process and basis by which he has confirmed all Directors meet "fit and proper person test" • Director with responsibilities for information identified • Media analysis identifying issues and actions plans 			<ul style="list-style-type: none"> • Information in place to populate pack for final TDA – Trust Board to Board meeting • Trust answers queries from the TDA
What the TDA will do				
TDA review of final assurance documents	<ul style="list-style-type: none"> • Review of documentation submitted ahead of final Board to Board meeting • Test documentation against the eight FT domains and triangulate with interviews with Trust and stakeholders • Full review of LTFM, downside scenario, downside mitigations, and CIPs and the QIAs 			<ul style="list-style-type: none"> • Information in place to populate pack for final TDA-Trust Board to Board meeting • Review to inform questions at the Board to Board meeting

Stage 3: Assurance and approval (continued)

Action	Requirements/ other information		Practices/ tools to be used	Output
What the TDA will do (continued)				
Quality Review	<ul style="list-style-type: none"> The TDA quality team convenes a quality review meeting with CQC, HEE, NHS CB, CCG and other relevant external parties CQC statement on the quality of the Trust following physical inspection TDA Clinical Quality Director to meet with CQC Regional Director for NHS Trust to fully understand regulator position on NHS Trust and to triangulate the TDA quality assessment Establish CQC position on work in progress short of regulatory action Explicit CQC clarification on readiness to be presented to the TDA. View to be included in Board-to-Board pack Need confirmation of current compliance against Monitor Quality Performance authorisation criteria, or equivalent 		<ul style="list-style-type: none"> TDA to review QRP and CQC statement. Option to meet CQC assessors as necessary Draw in other TDA colleagues as necessary Clinical visit by the TDA MD / ND where quality profile is subject to further assessment 	<ul style="list-style-type: none"> Information in place to populate pack for final TDA -Trust Board to Board meeting Information to inform Medical/Nursing Director report Inform Board to Board questions
Interview with HDD lead reviewer, BGAF reviewer and QGF reviewer	<ul style="list-style-type: none"> TDA to meet with HDD lead partner to consider issues raised in reports and progress made Explicit clarification on readiness. View to be included in Board-to-Board pack 		<ul style="list-style-type: none"> Draw in other TDA colleagues as necessary 	<ul style="list-style-type: none"> Information in place to populate pack for final TDA-Trust Board to Board meeting Inform Board to Board meeting questions
Interview with Commissioners	<ul style="list-style-type: none"> Commissioners who represent 25% or more of income of Trust must be interviewed. Other commissioners are in line with local requirements e.g. national centres may need to interview wider range of commissioners Discussions to understand commissioner perspective on Trust alongside commissioners' own performance Explicit clarification on readiness to be approved by TDA board. View to be included in Board-to-Board pack Discuss the commissioner support letter that is provided 		<ul style="list-style-type: none"> Minimum of issues to be covered – details to be provided Draw in other TDA colleagues, including the Quality Team as necessary 	<ul style="list-style-type: none"> Information in place to populate pack for final TDA -Trust Board to Board meeting Inform Board to Board questions

Stage 3: Assurance and approval (continued)

Action	Requirements/ other information		Practices/tools to be used	Output
What the TDA will do (continued)				
Internal TDA Peer Review	<ul style="list-style-type: none"> • A different TDA Regional Team, as well as TDA Subject Matter Experts, will undertake a review of the key submissions and the draft Board to Board pack and recommendations • The review will be completed within one week and will conclude with a feedback meeting between the two TDA teams 		<ul style="list-style-type: none"> • Template for peer review feedback 	<ul style="list-style-type: none"> • Meeting to feedback between the two teams based on written peer review feedback
Board-to-Board meeting between TDA and NHS Trust	<ul style="list-style-type: none"> • Whole voting applicant Trust Board required • TDA Executive to include a minimum of the relevant Director of Delivery and Development, the Medical and/or Nurse Director, a senior Finance representative, peer review Portfolio Director and the relevant Portfolio Director and/or Head of Delivery and Development • The TDA Board team has the delegated authority to agree additional tasks, information or assurance that are required prior to presentation to the TDA Executive Team • The Director of Delivery and Development along with relevant Director colleagues depending on the issues will review and approve additional submissions or assurance within an agreed timeframe • If the issues are significant and/or likely to take many months then the TDA team can agree that another Board to Board meeting will be required • TDA written feedback from all Board to Board meetings will be sent from the Director of Delivery and Development 		<ul style="list-style-type: none"> • Standard assurance report to be completed to form basis of meeting • Proportionate focus on areas of risk within assurance evidence needs to be made • Template for Board-to-Board questions to be used 	<ul style="list-style-type: none"> • Feedback letter to the Trust
TDA Executive Team	<ul style="list-style-type: none"> • The TDA Executive Team will consider applications deemed ready by the TDA Board to Board team • The TDA Executive Team will agree whether to submit an application to the TDA Board for approval 		<ul style="list-style-type: none"> • Standard template for presentation to TDA Executive team 	<ul style="list-style-type: none"> • Verbal feedback to the Trust

Stage 3: Assurance and approval (continued)

Action	Requirements/ other information		Practices/tools to be used	Output
What the TDA will do (continued)				
TDA Board	<ul style="list-style-type: none"> The TDA Board will receive in public session a short summary of an application, the review process, and any risks with a recommendation The TDA Board will agree whether to grant Secretary of State approval and move an application to Monitor or whether further work is required All NHS Trusts will continue to meet the TDA requirements for over-sight and other work until they become a Foundation Trust 		<ul style="list-style-type: none"> Standard template for presentation to TDA Board 	<ul style="list-style-type: none"> Written feedback to the Trust Letter to Monitor The TDA will continue to work closely with the Trust to both support and monitor the action plans and progress

Appendix 7: Organisational transactions: Further information

Benefits and risks of different types of transaction

If NHS Trusts are unable to deliver high quality, safe sustainable services by themselves then the TDA will consider the following potential options:

- NHS merger or acquisition;
- management contract;
- operating competition.

A summary of the key attributes and pros and cons of each of these intervention options is set out below. All are designed to bring in new ideas into existing organisations. Moreover, the process of bringing in these new ideas can be used to develop plans to improve quality, meet financial challenges and support the evolution of local services.

NHS merger or acquisition

This option is for the Trust to go through a competitive process to find a partner NHS trust or an FT partner with which to integrate. In effect, through the TDA the Trust would express a wish to merge with another NHS trust or to be acquired and taken over by an FT, where all assets, staff and estates transfer to the acquiring FT. In the latter scenario and subject to due diligence, all risk is passed to the acquirer.

There are important differences between a merger and an acquisition, which are reflective of both the scale and performance of the organisations concerned.

A merger involves the dissolution of the existing NHS Trusts and the formation of a new NHS Trust. A merger reflects a broad equivalence in size / scale between the merging NHS Trusts e.g.

- a new Board will be established, through a competed process;
- the new Board will look to 'draw from the best of the old' in forming a new organisation;
- the new organisation will then need to implement the merger Integration Plan and begin its FT application.

An acquisition involves the 'taking over' either of an (unsuccessful) NHS Trust by a (successful) FT or, exceptionally, the taking over of a smaller NHS Trust by a much larger NHS Trust. This process is not an integration of broadly equal partners e.g.

- The acquired NHS Trust will be dissolved and assets and liabilities transferred to the balance sheet of the acquiring organisation.
- The acquiring Board will remain in place; the acquired Board will be dissolved.

- The Integration Plan is likely to be based upon a 'rolling out' of successful operating systems in the acquiring organisation across sites previously managed by the acquired trust.
- In the case of an FT acquisition, the FT Board will need to be satisfied that the Integrated Business Plan can deliver satisfactory risk-ratings with Monitor, the FT sector regulator.

Whether by merger or acquisition, the challenge is to demonstrate through a competitive process (Gateway 2) and in a business case (Gateway 3) that significant synergies can be made between the organisations, both operational and financially, to ensure that NHS services for patients are deliverable within an FT context.

Exhibit: Strengths and weaknesses of an acquisition by an existing Foundation Trust

Strengths	Weaknesses
<ul style="list-style-type: none"> • Full transfer of all liabilities and assets to another NHS organisation. FTs may be interested in merging services to achieve greater efficiencies and improve quality • Will provide for a full transfer of all operational and performance risk and responsibilities to the acquirer • All assets will remain in the NHS • Will provide for an advantageous NHS to NHS TUPE transfer; staff will transfer from one NHS body to another one • May give long term sustainable solution • Will provide for system savings in synergies and future improvements 	<ul style="list-style-type: none"> • A limited pool of potential providers might reduce innovation and VFM, e.g. through restricting the merger or acquisition to only existing Foundation Trusts • An increase in footprint that an FT might have in a particular geographical area, with the subsequent reduction in contestability and choice for the patient • For NHS Trusts with large financial deficits, it is unlikely that, under Monitor rules, an FT would be able to take on the full liability to its balance sheet without a subsidy • Once the services are merged and integrated with the acquiring FT, it will become increasingly complex to separate them if required

Appendix 7: Organisational transactions: Further information (continued)

Management contracting

Management contracting is where a provider is appointed to assist a Trust in managing financial and/or operational change and improvement to enable a successful FT application. The contract is likely to be short term (two to three years) with a structure that rewards objective achievement and applies penalties should it fail.

Providers would be reimbursed by way of an agreed performance related fee, subject to meeting performance targets. The provider would not take significant demand, operational or financial risk as part of the agreement.

Exhibit: Strengths and weaknesses of management contract option

Strengths	Weaknesses
<ul style="list-style-type: none"> • Will involve a transfer of some operational and performance obligations • Will access specialised skills or management support • Will include obligations and a performance management framework with a strong set of key performance indicators (KPIs) covering all areas • Will be for a fixed term with clear milestones and targets to deliver FT status • Will have known management costs • Will be a shorter procurement compared to an operating franchise • Lowers the financial risk of providers taking on such a big operational challenge 	<ul style="list-style-type: none"> • Will have low level of risk transfer to the external provider assigned • Will require a fixed element to the management fee • Will have limited financial risk transfer to the external provider assigned, lowering the chance of success • Short term solution and might not facilitate fundamental cultural changes required • Not enough incentive for providers to deliver

Operational competition

An operational competition follows the model developed at Hinchingsbrooke Health Care NHS Trust, but also allows FTs to set out proposals to acquire the trust which is compared through a common evaluation framework. This model has been further developed at George Elliot Hospital NHS Trust.

Under this model the TDA would run a rigorous competition, open to both the NHS and the independent sector. This would maximise the possibility of identifying innovative, sustainable solutions. Under this model the successful bidder takes full operational control and accepts all risks, including demand.

This is not privatisation – if an independent sector provider offered the best quality and value for money, safeguards, such as those developed at Hinchingsbrooke, would be put in place to ensure that all staff and assets remain within the NHS. The operating company will have to operate within NHS rules, and fees are derived from any income/expenditure surplus.

The operating competition would be a solution to longer term issues and requires a longer contract (five to ten years) and an ‘intervention order’ confirming the Secretary of State’s permission. This option should be

adopted where radical new thinking is required throughout an organisation, rather than just changes in the approach to managing the NHS Trust.

Under the terms of the operational competition, the successful bidder would take full operational control of the Trust, with the remit and ability to effect the changes needed to enable the Trust to achieve FT status within an agreed timetable. The contract would reward successful delivery, but penalise the franchisee for a failure to deliver targets or maintain quality and safety.

The practical difference between a management contract and the operating competition is that under the latter, a third party drawn from the public, private, or third sectors, would take operational control to ensure that its change programme is delivered, whilst taking an agreed level of operational and financial risk. The operating competition would also allow a successful NHS FT the option to acquire the trust through a clear and transparent evaluation process.

Appendix 7: Organisational transactions: Further information (continued)

Exhibit: Strengths and weaknesses of operating franchise option

Strengths	Weaknesses
<ul style="list-style-type: none"> • The operating company takes responsibility for the running of the hospital and all performance requirements • The operating company takes a level of financial risk to ensure that the hospital breaks even • Will transfer the operational risk • Allows the widest possible competition, which should drive the best value for the taxpayer • Will have a strong performance management framework, including responsibility for clinical outcomes • NHS staff and assets remain within the NHS • Will have a contract term that allows for turn-around solutions • Will have a stipulation that management and maintenance of assets follow the NHS Capital Investment rules and requirements • The operating company receives a fee only after surpluses are generated 	<ul style="list-style-type: none"> • There is a requirement to retain a 'Residual Trust Board' that has the obligation to manage the performance of the franchisee • The operating company takes some of the financial risk onto its balance sheet through the requirement to ensure that the Trust accounts are always balanced as a minimum. This requirement, however, is capped and therefore the financial risk is shared with the NHS • Perception that the model takes a long time: cost and delay to achieving benefits

Role of the TDA and other stakeholders

The TDA is the Vendor for a transaction when the assets / liabilities / business / services are currently owned by the Secretary of State for Health and vested in the care of an NHS Trust. The TDA, as Vendor, has an obligation to ensure best value from the 'sale' of assets, with regard to both the delivery of health services and the interests of the taxpayer.

It is critical throughout the process of ensuring best value that full assessment is made of the delivery of quality healthcare. At each Gateway, the potential impact on quality healthcare of doing or not doing a transaction needs to be clear and tested, e.g. whether the transaction is aimed at driving improvements in the quality of healthcare or in ensuring that quality is safeguarded.

Although the TDA has ultimate responsibility for overseeing transactions, the key to successful transactions is active stakeholder engagement, involvement and dialogue. The main stakeholders involved in a transaction are summarised below.

Potential Providers

As Vendor, the TDA is aiming to find a provider to improve and sustain local services. Potential providers could include:

- other NHS Trusts (giving rise to a Trust–Trust merger);

- Foundation Trusts (giving rise to a proposal by the FT to acquire the Vendor's trust);
- the Private Sector (giving rise either to some form of short-term Management Contract or to a longer-term Operating Company arrangement, for example Circle / Hinchingsbrooke).

An important part of the Gateway 2 process is to determine the potential interest from the private sector, as well as to test the interest from within the NHS.

The public and commissioners

Commissioners want to commission high quality, safe, sustainable care from the best placed provider on behalf of the public. Commissioners will not tolerate providers who routinely deliver sub-standard care and quality or require ongoing support to shore up inefficient services.

Commissioners are therefore central to any transaction process. For a large transaction such as an acquisition, several commissioning bodies may be involved (e.g. numerous Clinical Commissioning Groups and the NHS Commissioning Board).

Inevitably there are costs of turning around failing organisations. And from April 2013, commissioners are the only sources of revenue funding across the NHS. Therefore, the decision to embark on a transaction route and at every

Appendix 7: Organisational transactions: Further information (continued)

subsequent Gateway, must be supported by the Vendor trust's commissioners.

What is more, a transaction process can be used to support wider commissioning and system objectives. For example, it is possible through any transaction process to test the impact of a new owner or operating company on improving the safety, quality, efficiency and responsiveness of existing services, as well as to explore how services might change and evolve.

For example, potential providers might be asked how they would develop services 'as is', as well as set out proposals 'as it could be'. The process could also be used to assess the different costs associated with both options and facilitate a meaningful dialogue with the public on the costs and consequences of change.

In the majority of cases, however, it will be for commissioners to decide and consult on any planned service changes. Service change considerations are, ultimately, separate from any governance changes. The only exception to this rule is where, applying the Unsustainable Provider Regime, the Secretary of State appoints a Trust Special Administrator who would consider how service changes might support an NHS Trust's financial sustainability.

Regulators

The regulatory framework for competition as it applies to healthcare in England is changing from April 2013.

Cooperation and Competition Panel (CCP)

Under pre-April 2013 arrangements, potential trust-to-trust mergers and the potential acquisition of an NHS Trust by an FT must be referred to the CCP.

The CCP provides a review of a potential transaction in two stages: an initial Phase 1 review (40 working days) to determine if there is a Significant Loss of Competition (SLC) and, if so, a Phase 2 review (80 working days) to undertake a cost benefits analysis and, if necessary, to propose mitigations.

The CCP also offers informal advice ahead of firm plans for a transaction (e.g. offering informal advice on whether potential transactions may result in a greater or lesser impact on competition). Since April 2013, the CCP has formally become the Cooperation and Competition Directorate of Monitor, the sector regulator. The CCP does not charge the NHS for its services.

Monitor

Monitor is the sector regulator for FTs. It assesses the performance of FTs and publishes a Financial Risk Rating (FRR) and Governance Risk Rating (GRR). An FT proposing to acquire an NHS Trust would produce an Integrated Business Plan

(IBP) for consideration by its Board and Monitor would review the IBP and advise a (new) FRR based on the new, 'merged' entity.

An authorised FT would require a FRR of at least 3 to demonstrate that the acquisition is financially viable. Typically, a transaction requires a degree of revenue support, so a key element of a transaction is the dialogue between FT and commissioners to prepare an IBP that will deliver a FRR of at least 3.

The Office of Fair Trading (OFT)

The Office of Fair Trading has announced that in re-interpreting the Enterprise Act, proposed acquisitions of NHS Trusts by FTs fall within its jurisdiction. From April 2013 therefore, the OFT, rather than the CCP, will deal with new referrals in regard to proposed FT acquisitions. OFT follows a similar 'Phase 1' process although, unlike the CCP, the OFT charges a referral fee of £160,000 for transactions where the turnover of the enterprise being acquired exceeds £120 million.

Competition Commission

The Competition Commission (CC) is an independent public body which helps to ensure healthy competition between companies in the UK for the ultimate benefit of consumers and the economy. It conducts in-depth investigations into mergers and markets. The CC

replaced the Monopolies and Mergers Commission in 1999, following the commencement of the Competition Act 1998. The Enterprise Act 2002 introduced a new regime for the assessment of mergers and markets in the UK.

As the statutory regulator, the CC's role is to interpret competition law and apply it to cases that are referred to it as potential breaches of the law. Cases are referred to it by the OFT, after which the CC will undertake a 'Phase2' review, potentially asking the CCP to assess the benefits case of a proposed NHS transaction.

The CC carries out an investigation and decides whether it has or may be expected to result in an SLC. If so, the CC has wide-ranging powers to remedy any competition concerns resulting from the merger, including preventing a merger from going ahead. It can also require a company to sell off part of its business or take other steps to improve competition.

The CC does not charge for its review. However the CC advises that a review process may take 8-9 months and during this period of review, no further integration may take place to progress a proposed transaction.

Appendix 7: Organisational transactions: Further information (continued)

Further detail in relation to gateway processes

Gateway 1 – Entering the Transactions ‘Pipeline’

Gateway 1 is the point at which the TDA decides to start a transactions process, because a trust is not able to offer a viable FT solution.

Process	Requirements	Best-practice / tools	Output
Review a trust's Operating Plan	That the Operating Plan includes clear evidence of a viable FT solution	Evidence provided by the trust of: A clinical strategy supported by the trust's main commissioners and local clinicians A financial plan supported by a 5 year Monitor-compliant LTFM demonstrating an operating surplus by 2015/16 A Project Plan evidencing leadership, governance consistent with other (successful) FT applications and containing a Resource Plan factored into the Financial plan	A local decision by the TDA on whether a trust has a viable FT solution without the need to consider a transaction (or not) A letter from the TDA D&D Director to the Trust CEO and Chairman confirming the outcome of the Operating Plan review
If a trust cannot evidence the above based on its operating plan submission, the trust may be given a reasonable amount of time e.g. 4 - 5 weeks to address any shortcomings	That the trust is able to demonstrate a viable FT solution	As above plus further evidence of sign-off from the trust board	As above

Process	Requirements	Best-practice / tools	Output
The TDA establishes a Panel, chaired by the D&D Director to consider the need for a transaction	A Panel identified from within the TDA + trust and commissioner involvement	Explicit consideration of non-transaction options (e.g. a change in local leadership, investment in additional management capacity, requirements for service reconfiguration)	Review of leadership capability in the trust Consideration of service change by commissioners
Report to TDA Board	Consideration of options necessary to put in place a viable FT solution An initial scoping of the costs required to make the trust 'FT-able'	Assessment of costs and potential benefits arising from a 'change in management' Letter of support from commissioners	Agreement to intervene in the trust board's leadership / management, or Agreement for commissioners to lead a service reconfiguration solution or Set up a Transactions Board, led by a designated TDA Board member as SRO

Appendix 7: Organisational transactions: Further information (continued)

Gateway 2 – Agreeing the form of procurement

Gateway 2 is the TDA decision on the appropriate form of procurement.

Process	Requirements	Best-practice / tools	Output
Assessment upon quality of 'Do nothing'	Quality Surveillance Group to provide an assessment of current quality and safety of services and prospects	Quality Risk Profiles, Quality Surveillance Group Information, TDA baselining information Quality Accounts Quality Dashboard Workforce Tool	Quality Impact Assessment of do nothing There may be immediate action required to safeguard patients and support staff
Assessment of strategic marketing considerations	Clarification of timing of a procurement if a service reconfiguration is already underway or contemplated in the near future	Engagement with commissioners	
	Are changes required at the trust before marketing (e.g. turnaround, divestment) which may result in better value for money?	Engagement with commissioners Consider use of external advisors	Clarification on the scale of financial problem Generation of procurement options Clarification on preferred timing of 'sale'
	Undertake informal market testing ('soundings') to assess the levels of NHS and commercial interest in the trust (or parts of the trust)	TDA market testing process	Clarification of potential benefits arising from different scale of procurement Generation of procurement options

Process	Requirements	Best-practice / tools	Output
Options appraisal	The trust and TDA consider and agree the Critical Success Factors (CSF) – clinical and financial – that drive the transaction and use these as measurable benefits for the project	Options benchmarked against the 'do minimum' intervention rejected at Gateway 1	Grounds the options appraisal in explicit consideration of benefits
	Explicit consideration (costs, benefits, timescales, risks) of different levels of merger / acquisition or procurement to deliver the CSFs		Ensures that the level of intervention is proportionate
	Explicit consideration of the commissioning intentions so as to check against future reconfiguration or service improvement		Ensures that the chosen route is possible
	An in-house understanding, shared with the NHS Commissioning Board, of the scale of transitional costs that may be required to complete a transaction		Preferred merger / acquisition or procurement route to find a transaction partner
Business Case including summary of the options appraisal to the TDA Board	A clear preference, supported by the trust's commissioners	Letter of commissioner support	A decision to start the procurement

Gateway 3 – The Preferred Solution

Gateway 3 is the decision to proceed with a Preferred Solution, after selection of the procurement route. The proposed should be proportionate to the level of intervention selected. The processes described below are sequential.

Process	Requirements	Best-practice / tools	Output
Review of the capacity and capability of the Transactions team to ensure it can undertake the merger / acquisition or procurement	Project / Procurement management support Stakeholder representation Specialist advisers, including clinicians Project initiation documentation and memorandum of understandings Confirmed, detailed project plan and budget	TDA Resource Pack	Ensure the Transaction Committee is fit for purpose for the merger/acquisition or procurement phase Confidence that the procurement plan can be delivered on time and to cost
Pre-qualification	Outputs from market soundings (Gateway 2) Pre-qualification questionnaire and memorandum of information Assessment of proposals	TDA Resource Pack	A shortlist of bidders
Invitation to tender	Outline Standard documentation and contract documentation Evaluation criteria Evaluation Panel	TDA Resource Pack	Final bidders

Process	Requirements	Best-practice / tools	Output
Final Offers	Shortlist final bidders Standard documentation Financial Model Clarification meetings/ dialogue Evaluation criteria Evaluation Panel Board-to-board interviews with TDA / commissioners	TDA Resource Pack	Recommendation on Preferred Bidder to the Transactions Board Agreed outline implementation plans
Business Case	Assurance on the business proposition from the preferred bidder Consideration of alternatives to moving to Full Business Case (Gateway 4) Confirmation that the proposal is signed off by the relevant Board	Clinical strategy and Quality Impact Assessment Track record of delivering quality healthcare 5 year Monitor compliant LTFM Resourced project plan including benefits realisation Letter of commissioner support Signed Heads of Terms (costs, other terms) Agreed contract documentation Informal view from the competition authority	Approval to develop the implementation plans and complete external authorisations

Appendix 7: Organisational transactions: Further information (continued)

Gateway 4 – Pre-implementation

Gateway 4 is the decision to implement the Preferred Solution, after all due diligence, legal and commercial and external review (e.g. by Monitor, OFT) has been concluded. Note that the processes described below and marked *often take place in parallel. The process of either Monitor authorisation (of an acquisition) and/or of competition review (CCP or OFT/CC) is likely to determine the critical path to completion.

Process	Requirements	Best-practice / tools	Output
*The Preferred bidder refines the business case by developing integration plans including proposals for capital investment, other transaction costs and benefits realisation	Dialogue between stakeholders		Post merger integration plan including benefits realisation An updated LTFM
*Legal due diligence	Legal advisors		Documentation of the transfer of assets and liabilities
*(For acquisitions) Issue of provisional Financial Risk Rating (FRR) by Monitor	An FRR of at least 3		Acquiring FT Board / Council of Governors able to make a decision on whether to complete the transaction
*Assessment of the impact of the proposal on Quality	Case Review by TDA Clinical Quality Team	National Quality Board and TDA guidance followed	Chapter in Business Case documenting impact on quality and safety of the transaction
*Assessment of the impact of the proposal on competition and choice	Referral to the CCP (NHS Trust mergers) or OFT (acquisitions)	CCP / OFT may accept the case for initial review based on Heads of Terms rather than approved Business Case	Phase 1 review (c 2 months) Phase 2 review, if required (4 months +) If the proposal is judged to have a deleterious net impact on competition, the regulator may propose mitigations or may stop the transaction

Process	Requirements	Best-practice / tools	Output
Implementation	Accepted bidder's plans for mobilisation and benefits realisation that comply with the Options appraisal Commissioners have contract management plans in place	Options Appraisals	Agreement to the bidders proposals
Finalising the Business Case	NHS Commissioner Board approval of the revenue funding 'package' set out in the Transactions Agreement or Contract Terms Signed Transactions Agreement (TDA, CCG(s) / NHS Commissioning Board, Preferred Partner & funder), Treasury FT Board approval (acquisitions)	DH Transactions Manual	Agreement on the funding package
TDA assurance	Check that all assurance and due diligence has been completed, including review by the TDA's Nursing Director and Medical Director	Full Business Case + assurance check	TDA Board decision to approve the transaction for recommendation to the Secretary of State
DH / Treasury approval (if applicable)	Confirm funding		Transfer agreements, etc. in place before the Secretary of State's signature
Implementation	Secretary of State signature Dissolution orders, establishment orders and transfer orders placed before Parliament		Completion of the transaction

Appendix 7: Organisational transactions: Further information (continued)

**Office of Government Commerce
Gateway reviews**

Plans for all TDA-led transactions should undergo Office of Government Commerce (OGC) Gateway reviews to provide independent assurance of the performance of the project to stakeholders and Trust Board members.

Review points will be detailed at the onset of the transaction project with the potential for reviews to be carried out in six phases:

- Review 0 – Strategic Assessment: reviews the business strategy.
- Review 1 – Business Justification: reviews the Business Case, its options appraisal and affordability.
- Review 2 – Procurement Strategy: reviews strategy and requirements, and updates the business case.
- Review 3 – Investment decision: evaluates proposals and selects provider.
- Review 4 – Readiness for service: evaluates award and readiness.
- Review 5 – Benefits realisation: identifies the service delivered benefits.

The TDA will decide the number and timing of the reviews, but as a minimum we expect reviews to be completed at stage 2, 4 and 5. The process involves:

- the provision of extensive background and process documents to the review team;
- a one-day planning meeting with the review team; and
- two to three days of interviews with a range of people and stakeholders.



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