

Applying for NHS Foundation Trust Status Guide for Applicants

November 2008

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Description Guide for NHS Trusts, which explains the revised NHSFT application process and requirements for NHS foundation trust status. The document covers all stages of the application from the SHA/Trust Development and Secretary of State Support Phases, through to Monitor's assessment and the application outcome.

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What this document provides

This guide for applicants has been developed by Monitor and the Department of Health. It is intended to provide aspirant and applicant acute, specialist, teaching, mental health, ambulance and potential community foundation trusts, with a comprehensive explanation of the NHS foundation trust application process and the requirements for achieving NHS foundation trust status. It is also a useful reference guide for partnership organisations, commissioners, service user organisations and other interested stakeholders to enable a wider understanding of the NHS foundation trust application process.

This document covers all of the phases of the application process. It reflects the recent transition from a centrally-led process to a locally owned and managed programme. The three phases, following the initial strategic health authority (SHA) applicant trajectory-setting exercise undertaken in early 2008, include the SHA-led Trust Development Phase, Secretary of State Support Phase, Monitor's Phase and the application outcome.

The document is organised as follows:

- Section 1 – NHS foundation trusts – background, features and benefits
- Section 2 – Overview of the NHS foundation trust application process
- Section 3 – SHA assurance
- Section 4 – The three phases of the NHS foundation trust application process
- Section 5 – Phase three – Monitor's assessment process
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1. NHS foundation trusts

1.1 Background

NHS foundation trusts were established under the National Health Service Act 2006 (the 2006 Act)¹. They have grown out of the wider public service reform programme, offering greater autonomy and freedoms for NHS organisations within a national framework of standards and inspections. NHS foundation trusts remain part of the NHS and subject to NHS standards, providing care paid for by the NHS, to NHS patients.

NHS foundation trusts are:

- a different type of NHS organisation, established as independent public benefit corporations, modelled on co-operative and mutual traditions;
- free from central government control and from SHA performance management;
- providers of healthcare according to core NHS principles – free care, based on need and not ability to pay;
- regulated by Monitor, the Independent Regulator of NHS foundation trusts;
- not required to achieve financial breakeven but must be financially viable;
- required to present their annual reports and accounts to Parliament;
- subject to the risk of insolvency, however, service provision would be protected; and
- inspected and reviewed by existing inspectorates including, for example, the Healthcare Commission, the Commission for Social Care Inspection and in the case of mental health trusts, the Mental Health Act Commission. From 1 April 2009, the Care Quality Commission will replace these three bodies.

Benefits of foundation trust status

NHS foundation trusts are:

- accountable to local people, patients, service users and staff, who can become members or governors. The governors have a duty to appoint non-executive directors to the trust board, enabling local ownership and service influence whilst maintaining local accountability;
- free to retain and build up surpluses that they generate and decide how to use these funds for the benefit of patients, service users and the communities they serve;
- able to borrow from commercial sources within limits set by Monitor, but their capital requirements are not subject to central determination or prioritisation; and
- able to more easily restructure and modernise in order to increase or decrease service capacity whilst maintaining effectiveness and efficiency.

¹ From 1 March 2007, the Health and Social Care (Community Health and Standards) Act 2003 was replaced by the National Health Service Act 2006.

Constraints of NHS foundation trust status

Against the context of the additional freedoms there are also certain constraints placed on NHS foundation trusts. NHS foundation trusts are:

- not able to withdraw from providing services for categories of patient and service users for whom care is unprofitable within the system of Payment by Results, without obtaining commissioner support (and/or ensuring alternative provision is available) and the agreement of Monitor. If a primary care trust (PCT) wishes to purchase a particular service on behalf of its population from an NHS foundation trust, that service must be provided unless there are clear clinical reasons why it should not be;
- not able to give priority to the care of private patients and neglect their responsibilities to the NHS. Under the legislation, the proportion of total income of the trust in any financial year derived from private charges (i.e. the care of private patients) cannot be greater than a certain percentage. This percentage is set out in the trust's terms of authorisation and is regulated by Monitor;
- not able to ignore national targets and standards;
- required to deliver services under legally binding contracts with PCTs and other contractual parties, therefore they are under a legal obligation to deliver within the terms of the contract they have signed; and
- obliged to remain compliant with the terms of their authorisation and to operate within Monitor's compliance and monitoring regime.

1.2 Monitor and the legal context for NHS foundation trusts

Monitor is the Independent Regulator of NHS foundation trusts and is responsible for the assessment and authorisation of applicants for NHS foundation trust status and the regulation of successful applicants. Monitor may give an authorisation under section 35 of the 2006 Act if satisfied that the criteria set out in section 35(2) of the 2006 Act and any other requirements which Monitor considers appropriate, are met.

The criteria include the requirement for an NHS foundation trust to have a constitution (the terms of which have to comply with statutory requirements and be approved by Monitor), a membership, a board of governors (most of whom are elected by the membership) and a board of directors. Details of Monitor's requirements are provided in section five.

An application by an NHS trust for authorisation as an NHS foundation trust requires the support of the Secretary of State. Once that support is forthcoming and an application for authorisation has been made to Monitor, the applicant trust may establish the initial membership and hold elections for the appointment of governors. Details on how to obtain Secretary of State support are provided in section 4.4.

Formal authorisation is accompanied by the issue of terms of authorisation. These set out the conditions on which authorisation is granted and with which an NHS foundation trust must comply. The conditions reflect both statutory obligations on NHS foundation trusts and other obligations which Monitor considers appropriate.

Once authorised, a trust is no longer subject to direction by the Secretary of State but is subject to regulation by Monitor. This includes monitoring to ensure compliance with the NHS foundation trust's authorisation. Details are given in Monitor's *Compliance Framework*. Monitoring and compliance are complemented by Monitor's statutory powers of intervention and enforcement, which may be exercised in certain circumstances.

1.3 Why assessment is important

Monitor's approach to regulation is one of risk management. Monitor must be confident and able to provide assurance to Parliament and a wide range of stakeholders that NHS foundation trusts will be legally constituted, financially sustainable, effectively governed and locally representative. These are essential requirements for NHS foundation trusts to be able to operate with sufficient autonomy, to deliver national health priorities and to become increasingly responsive to local needs.

The authorisation is a critical part of this process. Careful assessment at this stage will ensure that financially sustainable NHS foundation trusts with strong management are established. This will create a robust system and minimise the need for intervention. A rigorous assessment process is the cornerstone to Monitor's *Compliance Framework*, which allows a risk-based proportionate approach to regulation post authorisation.

1.4 Eligibility for NHS foundation trust status

To apply to Monitor for authorisation to become an NHS foundation trust, a trust must have the approval of the Secretary of State².

Trusts applying to the Secretary of State need to have the full support of their SHA. Readiness and therefore eligibility to apply for Secretary of State support is determined by the SHA, following a period of SHA-driven trust development and SHA-led assurance.

SHA assurance covers seven elements, or 'domains', of evidence required within an application. It requires the SHA to confirm to the Secretary of State that, if supported to apply to Monitor, the trust will be ready to operate as an NHS foundation trust straight away.

Subject to Secretary of State support, the trust will need to demonstrate, via the Monitor application process, that it is compliant with the 2006 Act and, specifically, that it is legally constituted, financially viable and sustainable, effectively governed and locally representative. If successful, the trust will then be authorised by Monitor as an NHS foundation trust.

The following sections provide an overview of the application process and SHA-led assurance, the seven domains and detail on the different phases of activity undertaken by applicants, SHAs, the Department of Health and Monitor for an applicant to achieve NHS foundation trust status.

² Section 33(1) of the National Health Service Act 2006

2. Overview of the NHS foundation trust application process

Applicants move through three distinct phases of activity during the NHS foundation trust application process.

These phases are:

- SHA-led Trust Development Phase, see section 4.2;
- Secretary of State Support Phase, section 4.4; and
- Monitor Phase, section five.

2.1 Preparatory work

Following an initial SHA and Department of Health review, early in 2008, of applicant trajectories, an updated national profile of the NHS foundation trust application pipeline was compiled. For the majority of trusts yet to go through the application process, SHAs and trusts have now established fixed time trajectories.

These trajectories indicate when trusts are expected to apply to the Secretary of State for support to apply to Monitor. Whilst the formal application date has been determined, the duration of the application process for each trust will vary. This is because the trajectory has been based on the current state of readiness of the trust concerned and the level of support and development that will be required to enable it to demonstrate fitness for purpose as an NHS foundation trust.

High Quality Care For All, the final report of Lord Darzi's Next Stage Review, sets out that the flow of NHS foundation trust applications be accelerated. In response to this, the Department of Health requested that SHAs undertake a further review of their trust trajectories during autumn 2008. SHAs have been asked to confirm those trusts that will be able to attain NHS foundation trust status by the end of 2010 and identify those organisations that are unlikely to secure NHS foundation trust status by the end of 2010. SHAs will indicate the issues that prevent the latter group of trusts from becoming NHS foundation trusts and begin to outline potential solutions in relation to these organisations. SHA boards will submit 'signed-off' trajectories to the Department of Health by the end of December 2008.

The Department of Health, acting in a performance management role, will receive periodic updates from SHAs to confirm progress against trajectory, which will ensure an up-to-date profile of the national pipeline is maintained and the flow of NHS foundation trust applications continues.

2.2 SHA-led Trust Development Phase

The duration of the SHA-led Trust Development Phase, which needs to be at least 12 weeks to accommodate a public consultation, is agreed mutually between the applicant trust and the SHA. The Department of Health's input to this phase will be dependent upon the needs of SHAs and is initiated by the SHAs.

Also during this phase, SHAs will have gained sufficient assurance about the trust's state of readiness to confirm to the Department of Health that it is ready to undergo a formal historical due diligence (see section 4.3.4). SHAs must advise the Department of Health when the historical due diligence is to be undertaken and the historical due diligence report will form part of the evidence required within the SHA assurance programme.

Although it is for SHAs to determine when the historical due diligence is undertaken, it tends to occur towards the end of the development phase, in preparation for formal application to the Secretary of State. The historical due diligence report constitutes evidence that will be reviewed by Monitor as part of its assessment process.

2.3 Secretary of State Support Phase

NHS foundation trust applications are submitted to the Secretary of State on a monthly basis. SHAs present their applications to the Applications Committee for consideration. This phase is expected to last approximately four weeks and, subject to Secretary of State support, applicants will be eligible to apply to Monitor for assessment and ultimately, if successful, authorisation as an NHS foundation trust.

2.4 Monitor Phase

On application to Monitor, trusts will be 'batched' and informed of the start date of their assessment. Monitor's assessment lasts approximately three months from the start date, culminating in authorisation for successful trusts.

An overview of the NHS foundation trust application process is illustrated on the next page. Details of the SHA-led assurance process and the activities undertaken during the three phases of the application process are provided in the following sections.

Overview of the NHS foundation trust application process

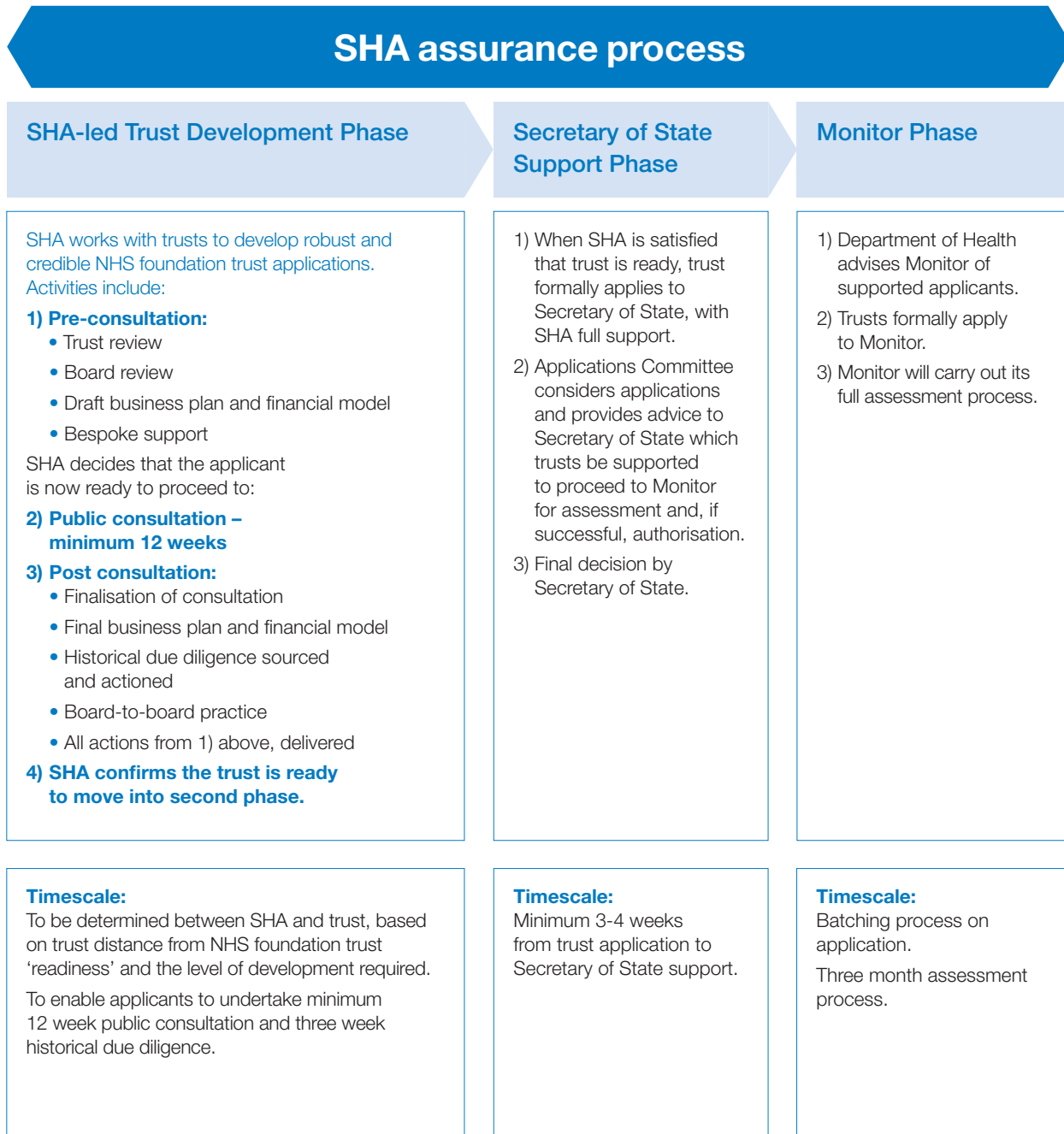


Fig 1: Overview of the foundation trust application process

3. SHA assurance

3.1 A new way of working

In December 2007, the Department of Health advised that responsibility for the NHS foundation trust application programme would transfer to SHAs in 2008. Prior to this, the Department of Health had been the primary source of technical advice and guidance to applicant trusts in the development of their NHS foundation trust applications.

This new way of working enables SHAs, as the local headquarters of the NHS, to take ownership of and accountability for the readiness of applicants and the quality of NHS foundation trust applications submitted to the Secretary of State.

3.2 SHA support

SHA support for applications is predicated upon the SHA being able to verify that the applicant trust has satisfied the seven domains of Department of Health assurance. Through a locally established evidence-based assurance process, the SHA will demonstrate to the Secretary of State that the applicant trust is ready to be authorised and operate as an NHS foundation trust.

3.3 The seven domains of Department of Health assurance

To enable SHAs to provide a detailed and objective opinion of the applicant trust, they need sufficient evidence to support their assessment of the seven domains of Department of Health assurance. The domains, which correspond to Monitor's three key assessment criteria and which are supported by a series of assurance 'indicators', are illustrated on the following pages.

The assurance indicators

SHAs will need to demonstrate to the Secretary of State that they have effective assurance processes in place, which provide appropriate evidence to verify that applicant trusts are operating at the standard required of an NHS foundation trust and that this evidence satisfies the assurance indicators within the seven domains.

The assurance indicators are based on the assessment criteria previously used by the Department of Health to assess formal applications when they were submitted to the Secretary of State. They also link closely to the support forms that SHAs are required to complete to accompany the formal NHS foundation trust application.

Secretary of State Assurance

– the Seven Domains

Secretary of State
needs confidence in:

Assurance indicators
- how has the SHA assured itself that:

**Legally constituted
and representative**

Is the applicant legally constituted?

- The trust's proposed NHS foundation trust application is compliant with current legislation
- The trust has carried out due consultation process
- Membership is representative and sufficient to enable credible governor elections

Good business strategy

Is the applicant financially viable?

- Strategic fit with SHA direction of travel
- Commissioner support to strategy
- Takes account of local/national issues
- Good market, PEST and SWOT analyses

Financially viable

Is the applicant financially viable?

- FRR of at least 3 under a downside scenario
- Surplus by year three under a downside scenario and reasonable level of cash
- Above underpinned by a set of reasonable assumptions e.g. CIPs, capex plans, IFRS treatment for trusts with PFIs, impact of tariff changes e.g. HRG4, etc.
- Commissioner support for activity and service development assumptions

Well governed

Is the applicant well governed?

- Evidence of meeting statutory targets
- Declaring full compliance or robust action plans in place
- Robust, comprehensive and effective risk management and performance management systems in place, which are proven to effect decision-making

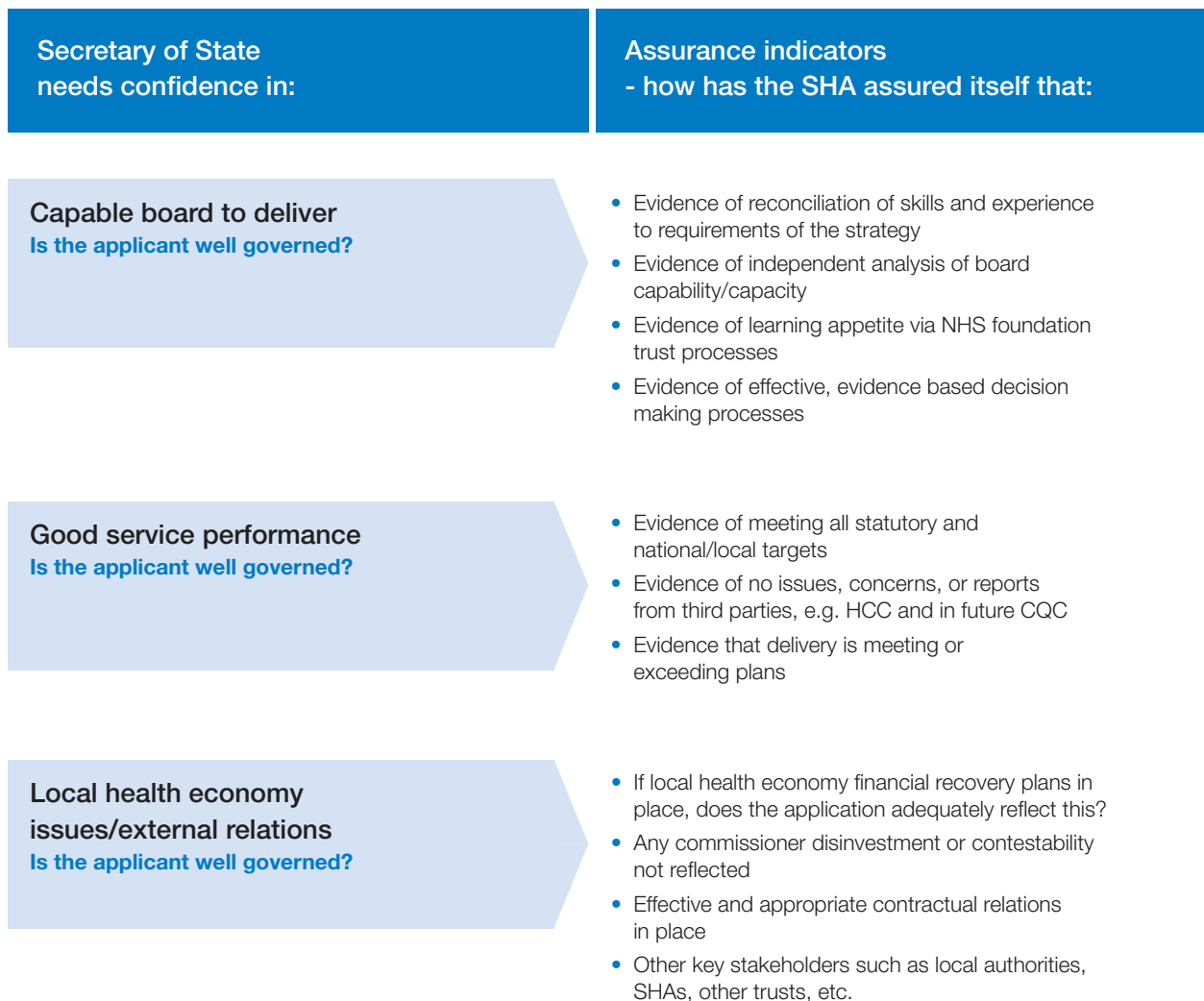


Fig 2: The seven domains of Secretary of State assurance

3.4 The assurance process

As a result of the transfer of responsibility away from the centre, SHAs are developing and refining their own regional assurance programmes. SHAs will need to adopt a variety of techniques and approaches to gain the assurance required to demonstrate applicants' capability and performance.

Whilst there are similarities between the systems created, it is for SHAs to determine how and when their processes are applied, including the decision to utilise their own or locally sourced external expertise to assist in this programme of activity. The only expectation is that the methods applied result in the SHA being able to satisfy the Secretary of State's requirements for formal application.

Examples of *how* SHAs may seek to assure the seven domains include (not exhaustive):

- trust use of external expertise, e.g. in the development of governance proposals and constitution;
- commissioner convergence meetings to discuss commissioner support for business strategy and to take account of local conditions;
- formal iterative processes adopted by the applicant with the SHA in respect of key submissions, with evidenced comprehensive feedback;
- specific systems reviews as part of an overall SHA assessment of governance, risk and performance management processes;
- formal structured interviews with the trust board, board observations and SHA board-to-board events;
- cohesive and rounded SHA data collection processes that include both internal and external data sources;
- understanding of up-to-date commissioning intentions within the SHA and processes in place to capture this; and
- evidenced and unequivocal commissioner support for the NHS foundation trust application and strategy, including financial implications.



Evidence

SHAs will compile a body of evidence to support their opinions on the state of readiness of applicants applying to the Secretary of State.

Much of the information and evidence required will already exist in some format and examples of *what* SHAs may collate include (not exhaustive):

- confirmation by the trust's legal advisers of compliance of the governance proposals, signed off by the SHA;
- iterative meetings with evidenced progress against action plans;
- outcome of commissioner support meetings and detailed letter of support;
- risk management strategy assessment by SHA governance leads;
- formalised feedback on board observations, interviews and SHA board-to-board events to determine board capacity and capability;
- performance management input to iterative NHS foundation trust meetings; and
- independent reports.

For purposes of brevity, the individual SHA assurance processes are not reproduced within this guide. However, it is recommended that applicants discuss the detail of the process and evidence required with their respective SHA foundation trust leads.

Website details for the SHAs can be found in section seven: tools and support.

Further detail on the phases of the NHS foundation trust application process follows in the next section.

4. The three phases of the NHS foundation trust application process

There is no set timetable for an NHS foundation trust application. The length of the NHS foundation trust application process is determined by the state of readiness of the applicant as part of the preparatory review undertaken early in 2008 and this will vary between applicants. It will also be dependent upon the rate of applicants' development through the three phases of activity.

As indicated earlier and in response to the Next Stage Review, in a few exceptional cases, it may be necessary for SHAs to consider the future viability of particularly challenged organisations post 2010 and pursue alternative strategic arrangements or solutions.

As each applicant trajectory is likely to be different, the table below provides an illustrative outline of key activities and fixed milestone dates that applicants and SHAs will need to be aware of when developing their application timelines. The dates cover the preparatory work and then go through the SHA-led Trust Development Phase through to the end of Monitor's assessment phase.

4.1 Likely timetable for an NHS foundation trust application

	Phase and key activities	Key dates to remember
	SHA-led Trust Development Phase	
1) Pre-consultation	<ul style="list-style-type: none"> Trust review Board review Draft business plan and financial model Bespoke support 	<ul style="list-style-type: none"> To a timetable, to be discussed and agreed between the SHA and applicant trust SHA to ensure no likely show-stoppers that would prevent applicant from going out to consultation
2) Public consultation		<ul style="list-style-type: none"> To include a minimum 12 week consultation
3) Post consultation	<ul style="list-style-type: none"> Finalisation of consultation Final business plan and financial model Historical due diligence sourced Historical due diligence actioned Historical due diligence report for trust/ SHA consideration Board-to-board practice All actions from 1) delivered 	<ul style="list-style-type: none"> To a timetable, to be discussed and agreed between the SHA and applicant trust SHA advises Department of Health to initiate historical due diligence, as part of SHA assurance and Monitor assessment. Historical due diligence procured on a quarterly basis by Monitor Timescales to be determined by SHA as part of assurance process, but at latest 4-5 weeks before month of formal application Timescales to be determined by SHA as part of assurance process, but at latest approx one week to ten days before month of formal application Timescales to be determined by SHA and advised to applicant Timescales to be determined by SHA as part of assurance process and to fit with application trajectory

	Phase and key activities	Key dates to remember
	SHA-led Trust Development Phase	
4) SHA confirms the trust is ready to move into Secretary of State Phase		<ul style="list-style-type: none"> To be determined by the SHA, in conjunction with the applicant
	Secretary of State Support Phase	
	<ul style="list-style-type: none"> Trust (or in some SHAs, the SHA on behalf of the trust) submits formal application to Secretary of State, with full SHA support 	<ul style="list-style-type: none"> First working day of each calendar month
	<ul style="list-style-type: none"> SHA submits completed application support form, with a letter of endorsement from the SHA chair and chief executive or SHA board and accompanying 'summary' documentation for consideration by the Applications Committee 	<ul style="list-style-type: none"> First working day of each calendar month
	<ul style="list-style-type: none"> Department of Health provides SHA with topics for discussion at Applications Committee 	<ul style="list-style-type: none"> As soon as possible after formal submission, in advance of the Applications Committee (Optional – SHA provides response to Department of Health in advance of Committee)
	<ul style="list-style-type: none"> Applications Committee 	<ul style="list-style-type: none"> Within two weeks of formal application, at latest mid-month
	<ul style="list-style-type: none"> Applications Committee recommendations to Secretary of State 	<ul style="list-style-type: none"> Within one week of Applications Committee, subject to any follow-up action required by either party
	<ul style="list-style-type: none"> Secretary of State support 	<ul style="list-style-type: none"> SHA advised of Secretary of State's decision at latest by the end of the month of formal application Trusts advised in writing of Secretary of State support or, if not supported, the reasons why support was not given, copied to SHAs SHAs re-profile trajectory for applicant trust and advise Department of Health of new timeline
	Monitor Phase	
	<ul style="list-style-type: none"> Department of Health ensures Monitor receives copy of letter of support for trusts that have been supported 	<ul style="list-style-type: none"> At the end of the month of formal application
	<ul style="list-style-type: none"> Monitor assessment process 	<ul style="list-style-type: none"> Minimum 12 weeks, to a timetable determined by Monitor through its batching process.

Table 1: Likely timetable for an NHS foundation trust application

4.2 Phase one – SHA-led Trust Development Phase

The duration of the Trust Development Phase will vary between applicants and will be dependent upon the 'state of readiness' of the applicant and the level of development required before the trust is able to demonstrate fitness for purpose as an NHS foundation trust. At the very least, this phase needs to be of sufficient length to allow for a 12 week (minimum) public consultation exercise and a historical due diligence to be undertaken.

The following factors (not exhaustive), which link directly to the seven domains, have been cited as some of the key elements of a successful NHS foundation trust application:

- governance – an organisation led by a capable, competent and proactive board with a clear focus and supported by clear, robust and appropriate governance arrangements throughout the organisation;
- a board with a 'shared agenda', where corporate business is the business of everyone on the board;
- a clear vision and strategy based on the engagement and involvement of key stakeholders and translated into a robust, realistic and credible integrated business plan (supported by sound business-focused governance arrangements to ensure clear accountability for delivery of specific objectives);
- a strong business-focused relationship with commissioners underpinned by clear commissioning strategies and intentions;

- a well articulated and coherent description of how the NHS organisations will move from the present to the future;
- a clear translation of the business plan into a deliverable financial strategy;
- robust internal systems and processes relating to governance, project management, resourcing, monitoring and delivery;
- a good track record of delivering plans such as cost improvement and efficiency programmes;
- a good track record of delivering healthcare targets and national core standards;
- a strong track record of financial performance supported by robust governance arrangements and internal controls; and
- a 'fit for purpose' finance function, which understands the requirements of being an NHS foundation trust.

Therefore, throughout the SHA-led Trust Development Phase, SHAs will work with the applicant trusts to:

- ensure that they have developed and refined a five year strategic integrated business plan, with support and advice from the SHA and the Department of Health as requested, that demonstrates financial viability and sustainability over the lifetime of the integrated business plan and beyond;
- prove that they have strong leadership and a commitment to modernising services for the benefit of patients and service users and their local communities;

- demonstrate that they have the support and involvement of staff and other local stakeholders, in particular key commissioners, for their vision of reform;
- undertake a minimum 12 week public consultation of their strategy and governance arrangements in their local community;
- be ready to undertake an independent historical due diligence by an accounting firm, to provide assurance to the SHA that the applicant's historical financial performance, financial reporting procedures and forward assumptions are robust and stand up to scrutiny; and
- be ready to make a formal application to the Secretary of State for support to apply to Monitor for assessment and, if successful, authorisation as an NHS foundation trust.

In conjunction with the development activities provided to applicants, SHAs will compile, as part of their assurance programme, a body of evidence that demonstrates applicants' progress towards NHS foundation trust 'readiness'.

The assurance evidence, which is obtained using a variety of methods to be determined by the SHA, will enable the SHA to verify to the Applications Committee that the seven domains of Department of Health assurance have been satisfied. Further information on the seven domains of Department of Health assurance can be found in section 3.3.

4.3 Stages of the SHA-led Trust Development Phase

The SHA-led Trust Development Phase spans several stages of activity in the application process. These activities are undertaken before, during and after the public consultation and are described in more detail in the following sections.

4.3.1 Pre-consultation

In the initial setting and updating of the application trajectory, SHAs and applicant trusts will determine the key activities that need to be undertaken to take the NHS foundation trust application forward. As the NHS foundation trust application programme is now SHA-owned and managed, the level of support and resource provided by SHAs to applicants will be sourced from available local expertise and the Department of Health Foundation Trust Team if required.

In order to facilitate the development of strong business plans, the activities undertaken during this stage may include a refreshed diagnostic, board review, review of draft integrated business plan and long-term financial model and tailored support to the applicant.

Trust review

SHAs will need to undertake a review³ of their applicant trusts to identify their current state of readiness in relation to the seven domains of assurance. The review may take, for example, the form of a root cause analysis, to identify the underlying reasons why specific trusts have not undergone sufficient organisational and operational development to enable them to apply for NHS foundation trust status sooner.

Once the constraints or challenges have been identified and quantified, an action plan for improvement will be developed and an implementation plan agreed between the SHAs and applicants trusts. This will be subject to regular review and monitoring by the SHAs, to ensure that actions are being addressed and to provide trust-based evidence to the SHA that tangible changes to organisational performance are being effected.

Board review

A key strand of the assurance requirements of SHAs, to evidence fitness for purpose, lies in the capacity and capability of the trust board. One of Monitor's three criteria for authorisation is being 'effectively governed' and Monitor has frequently reported board capability as being one of the reasons why applicant trusts fail to achieve NHS foundation trust status. In particular, the experience of the trust board and the quality of non-executive directors is cited as a common weakness and, therefore, an area warranting focused input.

SHAs will need to satisfy themselves that applicant boards demonstrate effective decision-making and challenge. SHAs will need to undertake an assessment, either in-house or independently, of the capability of the boards, to ensure that they will operate competently and effectively as autonomous units when authorised as NHS foundation trusts.

To this end, SHAs may choose to undertake trust board observations, or institute a series of mock board-to-board events. Assessment of the trust boards, the timing of which will be determined by the SHA, will help to highlight any specific areas of weakness and provide the opportunity for applicants to initiate developmental or remedial action.

Applicant trusts will also need to demonstrate, within their NHS foundation trust application, that they have undertaken some form of competency review or skills gap analysis, which will be linked to either an individually or group tailored development programme. It is for the trusts, in discussion with their SHAs, to decide what form any targeted development will take. This may include contracting external facilitators or seeking replacement board members if necessary.

Early review of draft documentation

As part of the development phase, SHAs may agree a schedule of submission dates with applicants, to review early drafts of the integrated business plan and long-term financial model. This is to enable SHAs to take an early view on the quality and credibility of the application, including the financial implications of the service developments being proposed. SHAs may request the Department of Health team's involvement in reviewing draft integrated business plans and long-term financial models, providing Department of Health feedback as necessary.

³ Applicant ambulance trusts and potential community foundation trusts may be subject to an initial, organisation type 'diagnostic' programme, which will inform the applicants' development action plan.

Review meetings may be held, involving the SHAs and applicant trusts, to provide written and verbal feedback on the draft submissions and to offer challenge on specific aspects of the business plan. These meetings may also provide the opportunity to guide applicants in how to strengthen their business plans.

At the same time as the draft submission timetable is being developed and in the run-up to public consultation, SHAs and applicants may also wish to undertake an independent review of the draft consultation documents.

As it is a requirement that applicants are ‘legally constituted’ when authorised, it is imperative that governance proposals are compliant with legislation. Applicant trusts and SHAs will need to demonstrate, therefore, that appropriate legal scrutiny has been applied to the governance proposals.

Early sight of draft consultation documentation will minimise the risk of undue extensions to consultation periods, or wholesale revisions of the constitutional arrangements.

These reviews, completed early in the development phase, will provide SHAs with the assurance that there are no significant issues within the applicant trusts and that they have progressed to a satisfactory level for the SHA to confirm that they are now ready and able to start an extensive public consultation exercise.

4.3.2 Public consultation

Monitor may not grant an authorisation unless it is satisfied that the applicant has sought views about the application of specified persons (section 35(5) of the 2006 Act). This means that applicants must undertake a public consultation with local communities and stakeholders on their application to become an NHS foundation trust. This is not a referendum on whether or not the application should be made, but a public debate on the applicant’s proposals.

The public consultation should run for a minimum of 12 weeks (excepting timescales for consultation ‘refreshes’, which will be agreed with key stakeholders) and involve those parties specifically identified in the legislation. Guidance, *Code of Practice on Consultation* has been published by the Department for Business Enterprise & Regulatory Reform and includes the recommendations for formal consultation (www.berr.gov.uk).

Section 35(5) of the 2006 Act states that Monitor must not give an authorisation unless it is satisfied that the applicant has sought the views about the application of the following:

- individuals who live within the proposed “public constituencies” of the trust;
- individuals who will be eligible to be members of the “patient or service user constituency” of the trust, if there is to be one;
- any local authority that would be authorised by the proposed constitution to appoint a governor to the board of governors; and
- any persons prescribed by regulations.

Monitor also expects an NHS trust to seek the views of its staff on the application⁴.

⁴ The Local Government and Public Involvement in Health Act 2007 Order 2008 repealed various provision of the 2006 Act with respect to Patients’ Forums. From 01 April 2008, section 35(5)(a) of the 2006 Act was repealed. The unintended effect was the deletion of the requirement for an NHS trust to consult with its staff.

Therefore, at the time the applicant formally applies to the Secretary of State, each applicant is required to have:

- undertaken a 12 week public consultation on the key elements of the application business plan, namely:
 - governance proposals and ‘visionary’ elements;
 - the benefits and risks of NHS foundation trust status for the applicant; and
- engaged informally and sought to reach agreement locally on a range of issues, including the HR arrangements, the detail of the service development plans, protected assets and services, etc.

Experience from existing NHS foundation trusts suggests that membership recruitment needs to start in earnest when the statutory public consultation begins. This provides sufficient lead-in time to generate a strong and diverse membership base at a time when the NHS foundation trust application will be most prominent in the public eye. Leaving it until later presents a real risk that a sizeable membership will not be recruited and puts the Secretary of State’s support for the application at risk. This is also important for the timing of elections during Monitor’s assessment phase, when applicants need to demonstrate elections have been taken from a representative membership base.

Membership recruitment

NHS foundation trusts, as public benefit corporations, must be able to demonstrate that they have recruited a sufficiently large and diverse membership base to ensure the success of their proposed governance arrangements.

A large membership base will provide the depth of need and diversity of opinion that will enable NHS foundation trusts to respond, with more certainty, to the health needs of their local communities. Applicants will need to demonstrate that they have recruited an extensive and representative public and/or patient membership and where innovative membership recruitment schemes have been adopted, applicants may need to seek legal advice on the appropriateness of these. To optimise the benefits that the membership will bring, applicants need to clearly articulate, within their public consultation document and membership strategy, the role of the membership and how it will add value.



4.3.3 Post consultation

Activities undertaken during this period may include finalisation of the constitution in light of feedback from the public consultation, reviews of the final iteration of the integrated business plan and long-term financial model, historical due diligence being contracted and actioned and board-to-board practice. At this stage, SHAs will also verify that applicants have delivered any actions arising from the pre-consultation activities.

Consultation feedback

Once the public consultation has closed, applicants will need to consider the feedback received during the consultation exercise and decide whether it is sufficient to warrant any revisions to governance arrangements. For example, revisions may take the form of changes to the composition of the board of governors, or a change of trust name.

Applicants will also need to ensure, in collaboration with their SHA or independent legal advisers, that any subsequent constitutional changes are compliant with legislation. In particular, any proposed changes of trust name will need to demonstrate compliance with NHS 'branding' principles.

SHAs will need to satisfy themselves that the public consultation exercise was properly undertaken and that applicants are continuing to build large and representative membership bases. Also, any final revisions to membership strategies, will be made by applicants at this time.

Final review of integrated business plan and long-term financial model

Applicants will be finalising the content of the integrated business plan and the assumptions that underpin the financial projections within the long-term financial model.

The applicant's five year integrated business plan, which needs to be concise and focused in content, will incorporate the following:

- vision and rationale for NHS foundation trust status;
- service development plans;
- five year (ten years where a PFI scheme is material) financial plans supported by activity, capital and workforce projections;
- proposals for the governance arrangements (e.g. membership arrangements, size and composition of the board of governors and board of directors, etc.), including plans to demonstrate how the membership will be utilised to inform the strategic direction of the organisation;
- evidence that systems and processes are robust to enable the organisation to operate effectively as an NHS foundation trust;
- the HR implications, i.e. workforce requirements and plans to effectively involve, engage and develop the workforce, along with wider plans for organisational development whilst continuing to maintain compliance with statutory obligations;
- undertaking a statutory minimum 12 week public consultation on the strategy and key risks associated with NHS foundation trust status;

- demonstrating strong leadership and a commitment to modernising services for the benefit of patients, service users and their local communities;
- providing evidence of current service performance, in particular targets and standards to demonstrate compliance with national requirements; and
- having the support from staff and other local stakeholders for their vision for reform, in particular confirmation from key commissioners of the proposed service models, activity and income projections. Applicants will be expected to have obtained written confirmation from their commissioners to this effect.

Further detail on the content of the integrated business plan, which should be focused in content and concise, is provided in the explanatory notes to the integrated business plan, in Appendix A3.

Final drafts of the NHS foundation trust application will need to be robust and credible, with key financial and strategic indicators being covered. SHAs may request their Department of Health Foundation Trust Team to undertake a review of the final drafts of the NHS foundation trust application and provide Department of Health feedback, to ensure that no key Department of Health policy issues have been overlooked at this final stage.

4.3.4 Historical due diligence

Prior to formal application to the Secretary of State, SHAs will confirm to the Department of Health which applicant trusts are ready to undertake the historical due diligence and will advise the Department of Health to initiate the review.

Monitor, which procures the historical due diligence on a quarterly basis, will commission a firm of independent accountants to undertake a centrally funded review covering in particular; the historical financial position of the trust; financial reporting procedures; and forward assumptions.

SHAs will need to confirm to the Department of Health in advance of the work being required, to allow Monitor to commission the activity from the independent accounting firms. The historical due diligence will be commissioned, either in its entirety for new applicants, or as a 'refresh' for applicants that are re-entering the process.

In situations where applicants are re-entering the NHS foundation trust programme, SHAs will need to decide, in conjunction with the trust and also Monitor via the Department of Health, the extent of any historical due diligence review to be undertaken.

Where an historical due diligence refresh is thought necessary, it would concentrate on:

- an update on issues raised within the original historical due diligence report;
- an update on changes to financial reporting procedures;
- an update on current trading (in particular across financial year ends); and
- changes to forecast assumptions.

Where the decision is made not to commission a refresh, applicants will need to demonstrate to their SHA that the issues and recommendations identified in the original historical due diligence have been actioned sufficiently and that there has been no material deterioration in the trust's management systems since the original historical due diligence was completed. Likewise, SHAs will need to reassure the Applications Committee that any issues raised within the original work have been demonstrably resolved.

The report from the historical due diligence will be used as independent evidence by SHAs as part of their assurance against the seven domains, to inform SHA support for the application at the Applications Committee and to be used by Monitor as part of its assessment process.

Historical due diligence report

A report (referred to as the historical due diligence report) will be produced by the independent accountants and will be made available to the applicant trust, the SHA, the Department of Health and Monitor. The report will highlight, in particular, the historical financial position of the trust, financial reporting procedures and forward assumptions. It will indicate the risks associated with achieving a sustainable surplus in the future to meet Monitor's assessment criteria.

At a minimum, the executive summary will provide confirmation of the underlying financial position of the trust, i.e. removing the impact of non-recurring income and costs (e.g. profits on disposal, restructuring costs). It will also highlight key issues that the SHA is expected to be aware of and that the SHA will be confident that the applicant has or is addressing.

It should be emphasised that the formal historical due diligence should not be used by SHAs as an early assessment measure. SHAs, as part of their assurance process, will undertake other activities to satisfy themselves that applicants have addressed the requirements of the historical due diligence. The formal historical due diligence is intended to be a final check, but only after the SHA is satisfied that everything else is in order and to provide evidence of assurance that the trust is ready to apply to the Secretary of State. The SHA board (or equivalent, if provider development board has delegated authority) will then be in a position to confirm its decision to support the application to the Secretary of State.

As part of the formal application to the Secretary of State, the historical due diligence report will be made available to the Applications Committee to inform the decision-making process. The historical due diligence report will also be used as evidence by Monitor during its assessment process.

Paying for the historical due diligence

Under new arrangements from April 2008, the Department of Health will only fund one historical due diligence per new applicant not previously in an application wave. SHAs need to agree with their trusts who will pay for any subsequent refresh or brand new historical due diligence, if the original one was concluded prior to April 2008 and will confirm to the Department of Health in writing which organisation is to be invoiced for the work. This approach includes all trusts that had a historical due diligence before April 2008.

SHA confirmation of application

At the end of the Trust Development Phase, SHAs will confirm to their applicant trusts whether or not they are ready to apply to the Secretary of State for support to apply to Monitor. This will be based on the SHAs having satisfied themselves that there is sufficient evidence to provide assurance against the seven domains for each application being submitted.

4.4 Phase two – Secretary of State Support Phase

Once the statutory 12 week public consultation process has been completed and the requirements in the Trust Development Phase have been met, applicants need to submit a formal application to the Department of Health to secure the support of the Secretary of State to move forward to Monitor's assessment phase.

4.4.1 Formal application

Trusts formally apply to the Secretary of State for support to apply to Monitor for authorisation as an NHS foundation trust.

The formal application consists of the following documents:

- Integrated business plan;
- Appendix 1 – Long-term financial model in excel format;
- Appendix 2 – Governance rationale;
- Appendix 3 – Draft constitution;
- Appendix 4 – Consultation response and staff engagement; and
- Appendix 5 – Membership strategy.

Further detail about the integrated business plan can be found in appendices A2 and A3.

Formal applications need to be submitted to the Department of Health on the first day, or first working day, of the month in which the SHA is to present them to the Applications Committee.

Applicants (or SHAs if they have agreed to submit applications on behalf of the applicant) will be required to submit their formal submission in the following format:

- One hard copy and copy on disk of the integrated business plan and appendices to: the Foundation Trust Team, Room 4N08, Quarry House, Quarry Hill, Leeds, LS2 7UE
- One electronic copy of the integrated business plan and appendices by email to: ftapplication@dh.gsi.gov.uk
- One hard copy and one electronic copy of the integrated business plan and appendices to the assessment director within the Foundation Trust Team. Contact details will be provided separately.

4.4.2 SHA support

Formal applications to the Secretary of State require the full support of either the SHA board, or the SHA Provider Development Board, if appropriate authority has been delegated to this body.

SHAs will complete a high-level summary and an SHA support form for each application made. This will be submitted along with a covering letter of support from the SHA chair and chief executive or SHA board, on the first day, or first working day, of the month of the Applications Committee to the Foundation Trust Team, to accompany the trust's application. They will be asked to comment formally on the seven domains of Department of Health assurance (see section 3.3) and confirm to the Secretary of State that, in the SHA's opinion, the trust is fit for purpose and ready to apply for authorisation as an NHS foundation trust.

SHAs will be required to submit their formal applicant support documentation in the following format:

- One electronic copy of the high-level summary, completed SHA support form and SHA letter of endorsement from the SHA board or SHA chair and chief executive, by email to: ftapplication@dh.gsi.gov.uk

The SHA support form and covering documentation will be used as the basis for discussion at the Applications Committee. It may be necessary for the Department of Health Foundation Trust Team to seek clarification with SHAs on specific aspects of the NHS foundation trust application. If this is the case, the foundation trust team will contact SHAs in advance of the Applications Committee and advise the areas to be discussed.

4.4.3 The Applications Committee

The Applications Committee is a body of senior level Department of Health officials that convene on a monthly basis. The role of the Applications Committee is to advise the Secretary of State on the merits of each NHS foundation trust application. These recommendations will be based upon the applicant's SHA assuring the Applications Committee that the trust is consistently demonstrating 'fitness for purpose' as an NHS foundation trust and that it is ready to apply to Monitor for authorisation.

The Applications Committee will invite the applicant's representative SHA to state its support for the applicant and its fitness for purpose as an NHS foundation trust. The SHA will be invited to substantiate its position, by demonstrating that its opinion is based on the seven domains of its applicant assurance programme. Typically, the SHA will make a short presentation, followed by some discussion of the key points with the Applications Committee.

The Applications Committee will then consider each proposal, based on the formal support documentation and the SHA's presentation and discussion with the Committee.

The Applications Committee will recommend to the Secretary of State whether an application is to be supported.

4.4.4 Secretary of State Support

The Secretary of State's support is a legislative requirement that applicants must obtain. It is not a guarantee that applicants will be successful in the Monitor assessment phase.

The Secretary of State's support will be dependent upon evidence of unequivocal support by the SHA, as demonstrated by the assurance process, for the application being submitted. It is expected that, if the SHA assurance processes are sufficiently robust, then the likelihood of applicants not being recommended to the Secretary of State for support will be minimal.

The representative SHA will be responsible for communicating the Secretary of State's decision to the trust, which will be followed by written confirmation from the Department of Health to the applicant trust, copied to the SHA chief executive.

In the event that the Applications Committee recommends that the Secretary of State does not support an NHS foundation trust application, the SHA will explain the reasons for non-support to the trust and, after discussion with the applicant, will advise the Department of Health Foundation Trust Team of the trust's new application trajectory.

Subject to the Secretary of State giving his/her support, the Department of Health will ensure that Monitor receives a copy of the letter that is sent to those trusts that have been supported to pursue NHS foundation trust status.

The final decision on whether an organisation can be authorised as an NHS foundation trust rests with Monitor.

4.5 Roles and responsibilities

Descriptions of the roles and responsibilities of the three key parties in the first two phases of the NHS foundation trust process are outlined below. The new roles reflect the shift in emphasis in the process, from being historically a centrally-led and resourced programme, to one where the principal resource and expertise is available within the SHA.

4.5.1 Strategic Health Authorities

SHAs have the principal development, supporting and, in particular, assurance role with applicants. They will be responsible for working with trusts prior to formal submission to the Secretary of State and will continue to support them afterwards, during the Monitor phase, until they are authorised as an NHS foundation trust.

SHAs need to:

- determine the applicant trajectories, taking account of the level of development that trusts will require before being ready to apply to the Secretary of State;
- consider the additional resources and skills mix they need to allocate to the NHS foundation trust roll-out process, whether through re-allocation of current resources or bringing in additional support;

- ensure effective channels of communication are in place both with applicant trusts and the Department of Health Foundation Trust Team, to ensure applicant development and progress against trajectory is understood by all parties;
- actively support applicant trusts as they develop robust service and financial plans that demonstrate long-term viability and sustainability;
- undertake appropriate systems reviews of the trust board, risk management and corporate governance systems, to demonstrate organisational development;
- determine when applicant trusts are ready to commence extensive and effective public consultation;
- encourage and enable the sharing of good practice and learning, both with their peers at regular SHA/Department of Health update meetings and with applicants at locally held update meetings on key issues such as central policy updates, applicant support programmes, etc.;
- ensure that applicants are sufficiently developed before commissioning the formal historical due diligence;
- ensure that effective assurance processes are in place to compile the body of evidence required to satisfy the Department of Health's seven domains;
- confirm that the SHA is satisfied with the state of readiness of the trust, the quality and realism of the integrated business plan and long-term financial model and is fully committed to supporting its formal application to the Secretary of State;
- describe to the Applications Committee how they have assured themselves that their NHS foundation trust applicants are fit for purpose and ready to operate as foundation trusts;
- maintain regular dialogue with applicants during the Monitor assessment process, to enable early trust to SHA feedback of the process in general and of any specific issues identified and to support the trusts in addressing these prior to authorisation; and
- understand the reasons for any unsuccessful applications with Monitor, learning the lessons and ensuring that local development and assurance processes address any risks.

4.5.2 Applicants

With the introduction of a locally driven NHS foundation trust application programme, SHAs are the primary point of advice and guidance for applicants in the development of robust and credible NHS foundation trust applications.

For example, applicants need to ensure:

- the NHS foundation trust application trajectory has been agreed with the SHA and the trust board has confirmed that it is achievable;
- the vision and business strategy has been endorsed by the SHA as reflecting the strategic direction of the local health economy;
- commissioners are in accord with the strategic direction of the trust's integrated business plan and have provided letters of support confirming activity and income streams;
- the integrated business plan takes account of national and local policy initiatives, to ensure currency and credibility of the NHS foundation trust application;

- systems and process reviews are undertaken to ensure the organisation is fit for purpose at the time of formal application to the Secretary of State;
- appropriate expert advice is sought in respect of constitutional or board development issues, for example;
- sufficient capacity and capability is available both at trust board level and within the finance department to enable it to operate effectively as an NHS foundation trust;
- effective mechanisms are in place to communicate with the staff about the process, organisational development and to enable feedback to be taken into consideration at the appropriate levels within the trust;
- extensive and representative public consultation is undertaken, based on sound governance and service proposals and feedback is considered by the trust;
- trust-specific issues are identified and brought to the SHA's attention at the earliest opportunity and action plans are implemented and monitored to enable the trust to maintain its trajectory;
- the integrated business plan and associated appendices are complete and comply with legislative and policy requirements;
- the SHA is satisfied with the state of readiness of the trust, the quality and realism of the integrated business plan and long-term financial model and is fully committed to supporting its formal application to the Secretary of State;
- relevant applicant staff are available to the independent reporting accountants to enable them to carry out their historical due diligence work; and
- regular dialogue is maintained with the SHA during the Monitor phase to alert it to any issues identified or to provide feedback on the Monitor process.

Applicant trusts, therefore, need to ensure that their SHA has agreed regular communication sessions with them and that they have developed good lines of communication with their key stakeholders. These may take the form of meetings or reviews of documents, or of utilising the technical resource available to them within the SHA in the development of credible business plans.

Technical support may also include, where appropriate, applicants or SHAs sourcing supplementary external legal, financial or commercial expertise to provide an increased level of 'challenge' to applicants in the development of their NHS foundation trust applications.

4.5.3 How the Department of Health will work with SHAs

As SHAs are now in the driving seat of the NHS foundation trust application process, the Department of Health does not provide direct support to trusts, other than as part of a wider support package for the SHAs. Instead, SHAs work closely with the Department of Health Foundation Trust Team.

The Department of Health Foundation Trust Team

The Department of Health Foundation Trust Team is the primary point of contact for SHAs in respect of the applications process.

The role of the team members is to:

- agree with the SHA where each trust is on the NHS foundation trust trajectory;
- maintain and disseminate central guidance on applications criteria and process including articulating ongoing performance issues that have a national prominence;
- clarify the implications of any key reform changes or issues identified, such as changes to the financial regime, or service reviews, to enable SHAs to support applicants to finalise business plans that optimise opportunity and minimise risk;
- facilitate the exchange of good practice between SHAs;
- direct support to SHAs as a departmental liaison point;

- provide help and support to SHAs on all aspects of their trusts' NHS foundation trust applications, which may include reviewing and commenting on draft documents if requested by the SHA; and
- at the SHAs' discretion and request, provide direct support to trusts, e.g. participating in development and review meetings.

The Foundation Trust Team also has extensive knowledge of the previous waves of applications and can use that knowledge to ensure issues are identified quickly and solutions developed by the SHA and applicant trust.

In addition, technical business expertise is provided by an Assessment Director from within the Department of Health team, whose primary focus is to utilise their previous Monitor experience to help SHAs build capacity and to understand what trusts need to do to develop an acceptable NHS foundation trust business and financial application.

4.6 Phase three – Monitor Phase

Once an applicant has secured the support of the Secretary of State, it can formally apply to Monitor, to enter Monitor's assessment phase.

Details of Monitor's assessment process are explained in section five.

5. Phase Three – Monitor’s assessment process

5.1 Overview and objectives

The approach of Monitor to regulation is one of risk management. Monitor must be confident and able to provide assurance to Parliament and a wide range of stakeholders that NHS foundation trusts will be legally constituted, financially sustainable, effectively governed and locally representative. These are essential requirements for NHS foundation trusts to be able to operate with sufficient autonomy, to deliver national health priorities and to become increasingly responsive to local needs.

The authorisation process is a critical part in this process. Careful assessment at this stage will ensure that financially sustainable NHS foundation trusts with responsible management are established, which will create a robust system and minimise the need for intervention.

To be authorised, applicant NHS foundation trusts (applicants) must:

- ensure their constitution complies with the 2006 Act and is otherwise appropriate;
- ensure the provision of mandatory services in the business plan and that the trust can and will comply with the authorisation;
- make governance proposals which provide a representative and complete governance strategy;
- provide board certification that the applicant has the organisational capacity to deliver the business plan;
- provide a board statement which confirms sufficient working capital for the next 12 months and is accompanied by an appropriate professional opinion on this statement;

- provide board certification that financial reporting procedures are satisfactory and this is based on an appropriate professional opinion;
- ensure the Board has demonstrated that the trust can, with a high likelihood, generate a sustainable net income surplus by year three of the projected period, unless exceptional circumstances exist, and maintain a reasonable cash position;
- ensure it has a minimum financial risk rating of 3 at authorisation and in the first full year of projections unless exceptional circumstances exist; and
- ensure it has a minimum governance rating for service performance of amber (as defined in Appendix B to the *Compliance Framework*).

To develop its view on sustainability and governance arrangements/statutory requirements, Monitor will conduct an assessment focused around three key questions – is the applicant:

1. Legally constituted? (section 5.2)
2. Well governed? (section 5.3)
3. Financially viable? (section 5.4)

In addition, applicants will be required to demonstrate that their business plan incorporates the required level of mandatory services to be compliant with schedule 7 of the 2006 Act (see section 5.5).

Monitor’s assessment guidelines, to ensure a robust assessment of ability of the applicant to meet the requirements above, are described in detail on the following pages. A comprehensive list of all Monitor submissions is provided in Appendix B1. The assessment guidelines should be read in conjunction with the 2006 Act.

5.1.1 Initiating your application

Monitor receives confirmation that applicants have received Secretary of State support directly from the Department of Health. Once this confirmation has been received, a letter is sent to each successful applicant advising them of the process required to initiate their application.

Initiating the application requires each applicant to send the following to Monitor:

1. a covering letter of application from the NHS trust chief executive; and
2. a copy of the:
 - letter confirming the applicant has the support of the Secretary of State;
 - proposed constitution of the NHS foundation trust; and
 - integrated business plan as submitted to the Department of Health (this should include a description of the goods and services which the NHS trust proposes should be provided by the NHS foundation trust).

These are the minimum requirements for an application as specified in section 33 (1) and (2) of the 2006 Act.

Once these documents have been received, Monitor will undertake its batching decision.

5.1.2 Batching decision

Monitor moved to a rolling monthly programme of assessments in November 2006. Applicants which have received Secretary of State support are referred to Monitor on a monthly basis. The number of applicants requiring time slots each month can vary with the number of referrals each month and the existence of deferrals and postponements from earlier waves. Accordingly, there is a practical need to batch applicants into assessment groups once they have formally been passed to Monitor. Applicants should therefore be aware that Monitor's assessment phase may not commence immediately after the Secretary of State referral. A letter from Monitor initiating the application process will provide applicants with an indication of the likely timetables for the assessments in their group. However, the final allocation to a proposed authorisation date will be made after the completion of a batching checklist.

Process

Previously, Monitor used the findings from the historical due diligence performed by independent reporting accountants to inform the batching decision. From October 2007, Monitor introduced a more systematic checklist against which to batch. The checklist developed by Monitor aims to highlight issues which have caused deferrals, postponements and rejections in the past and this will be used to inform the timetable for each applicant's assessment.

Once applicants have been passed to Monitor from the Secretary of State and the initial submissions have been received, a desktop review is carried out on each applicant's business plan to enable Monitor to complete the checklist.

This review takes approximately two days to complete and will involve:

- reviewing the integrated business plan and historical due diligence reports;
- reviewing key assumptions in the model;
- conducting telephone interviews (or a site visit) with the chief executive and finance director of each applicant; and
- undertaking further interviews as required (e.g. with commissioners).

The output of this review will be a letter to each applicant confirming the timetable for their assessment, together with details of the issues highlighted in the desktop review.

Monitor's priority will be to assess applicants in line with its capacity. In some cases where a slot is available, the assessment may start immediately. However, if significant issues arise from the initial review then Monitor may decide to move the applicant to a later group to allow the trust sufficient time to address those issues prior to commencement by Monitor of its assessment.

In general, Monitor will prioritise applicants to the first available assessment slots as follows:

- first priority to deferrals reactivating their application;
- second priority to postponements reactivating their application; and
- third priority to new applicants.

A sample batching checklist is provided in Appendix B13.

Implication of the deferral policy

As a result of using the more systematic checklist and of highlighting issues at the beginning of the assessment process, Monitor has revised its deferral policy. Section 6.3 contains further details of this revision.



5.2 Is the applicant legally constituted?

5.2.1 Submissions

Applicants are required to submit the following documents:

- a final draft of the proposed constitution (based on Monitor's Model Core Constitution – the "Model Core") with proposed changes tracked to record additions to the Model Core. Monitor expects to see a final version only of the draft constitution for consideration and approval; therefore applicant trusts should not submit multiple draft versions of their constitutions for review by Monitor;
- the proposed constitution should incorporate by reference or as an annex the Model Election Rules. Any proposed departure from the Model Election Rules should be shown as a tracked change;
- summary of statutory consultation process (including issues raised and applicant's response);
- membership strategy, which must include steps taken to ensure a representative membership. An update on the implementation of the membership strategy will also be required later on during the assessment process; and
- details of the electoral process and report on initial elections.

5.2.2 Legally constituted?

To assess the submissions Monitor's assessment team will ask the following questions:

5.2.2.1 Do the proposals meet the statutory requirements laid out in the 2006 Act?

Is the proposed constitution compliant with Schedule 7 of the 2006 Act?

- The purpose of this question is to ensure statutory compliance.
- The applicant is required to submit its proposed constitution based on the Model Core with any additions thereto shown as tracked changes.

Is the proposed constitution otherwise appropriate?

- In this context reference should be made to Appendix B8

Required submissions: *Constitution*

Has the statutory consultation been held?

- This question is to ensure that the applicant has carried out the consultation required in the 2006 Act. Monitor will also consider the content of the consultation and the applicant's response to the outcomes of the consultation process. The trust needs to demonstrate that it has consulted with the bodies referred to in Section 35(5) of the 2006 Act.
- The applicant is required to submit evidence of its consultation process and an account of the outcomes and change made as a consequence.

Required submissions: *Summary of statutory consultation (including issues raised and the applicant's response).*

Have elections been held for the board of governors?

- Have elected governors been appointed in accordance with the proposed constitution and electoral rules?

Required submissions: *Details of electoral process and report on initial elections*

5.3 Is the applicant well governed?

5.3.1 Submissions

Applicants will be required to submit the following information to support their governance arrangements:

- five year business plan (specific reference to chapter 9 which highlights governance arrangements and rationale – see business plan template);
- membership strategy, which must include steps taken to ensure representative membership. An update on the implementation of the membership strategy will also be required later on during the assessment process;
- register of governors' interests to be held by the NHS foundation trust;
- register of directors' interests;
- self-certification on areas specified in section 5.3.2.2 and 5.3.2.3;
 - a letter from the chair confirming that the whole trust board has confidence in the arrangements that it has in place for each area;
 - the relevant trust board paper(s) defining its approach to each area; and
 - copies of the trust board minutes confirming that the trust board has confidence in the arrangements for each area, which record the discussions held in a trust board meeting.

- direct evidence on performance management;
 - performance management strategy and policy documents approved by the trust board;
 - an example of the regular performance reports submitted to the board;
 - reports (including action plans where available) from inspectorates including the Healthcare Commission, the Commission for Social Care Inspection, the Mental Health Act Commission and the National Oversight Group for High Security Hospitals;
 - any further documentation that the applicant considers relevant to provide evidence in support of questions outlined in section 5.3.2.2, if these documents do not fully address the criteria; and
 - documentation submitted should include that provided to the trust board (e.g. performance measures reported to the trust board on a regular and an exception basis).
 - direct evidence on risk management;
 - a copy of the applicant's risk management strategy and policies approved by the trust board. This should include criteria for measuring and evaluating risks and procedures for establishing contingency plans;
 - statement of internal control including disclosures on non-compliance which should include disclosure of any significant internal controls (including serious untoward incidents from the last 18 months) issues and a schedule of evidence upon which the trust board is relying for each criterion;
 - management report demonstrating how they have satisfied themselves that they have adequate controls in place to manage risk. If the applicant has used any form of external review in its assessment process, Monitor will expect copies of the reports;
 - evidence of compliance with the NHS Litigation Authority's Risk Management Standards Level 1 or above. This should include any external assessment report and agreed action plan. If an applicant is currently undergoing assessment, please notify Monitor of the date when the assessment process is due to come to an end; and
 - a statement from the trust board that there has been no material change in the applicant's risk management policies and processes since these assessments (referred to in the bullet point above) were made, or details of any significant changes made and confirmation that the processes have been implemented and are effective.
 - direct evidence on achieving all existing targets and national core standards;
 - trend analysis on performance against existing targets; and
 - a copy of the applicant's self assessment on healthcare standards.
- The following section describes in more detail the questions that Monitor will consider when assessing the governance arrangements of each applicant. An overview of these questions is provided in Appendix B2.

5.3.2 Well governed?

To assess the robustness of the governance submissions, Monitor will ask the following questions.

5.3.2.1 Do the proposals provide a representative and comprehensive governance strategy?

Have you taken steps to secure a representative membership?

- This aims to ensure that the applicant has taken steps to secure that, taken as a whole, the actual membership of the public constituency (and the patients' or service user constituency if there is one) will be representative of those eligible for membership. It also seeks to confirm that the applicant has taken measures to avoid the over-representation of special interest groups, or the under-representation of ethnic minority groups or people with disabilities or other special needs.
- In relation to mental health trusts specifically, the Electoral Reform Services (ERS) and Mencap have previously worked on joint ventures to help people with learning disabilities take part in election processes. Mencap recommends that mental health trusts have a longer lead in time as preparation for the election process and simplify all election literature. This additional timing allows for educating the membership in the election process, canvassing widely for candidates and also providing support to those members wishing to stand for election. The trust may also find that it has to provide support to enable some members to exercise their vote.

- Monitor will require an update on the implementation of the membership strategy after the membership list for the current elections has been closed. This update should include an analysis of the public and patient constituencies consistent with the requirements of the *Compliance Framework* together with an action plan to grow a representative membership. A template for this update is provided in Appendix B15.

Required submissions: *Membership strategy; update on implementation of membership strategy (Appendix B15)*

Will the board of governors reflect the composition of the membership; are the affiliations and financial interests of the governors known?

- The applicant is required to demonstrate an understanding of the issues involved and indicate how it intends to reduce potential risk. The applicant should also identify its arrangements, including a timeline, for the first round of elections and how potential risks are addressed within the current process.
- Prior to authorisation, Monitor will require the declared election results. This will enable Monitor to assess whether the board of governors offers a balanced representation.
- Monitor will expect the governors to declare publicly and for the trust to maintain a register of any financial interest that the governors may have in health or social care related organisations, which provide services to the NHS or any affiliation to health or social care related campaigning special interest groups.

Required submissions: *Constitution; governance arrangements and rationale; electoral rules and regulations (including how key issues are being addressed); account of the current electoral process (including how it differs from the constitution and how key risks are being addressed); update on elections; register of governors' interests to be held by the NHS foundation trust.*

Are the affiliations and financial interests of the directors known?

- Monitor will expect the directors (executive and non-executive) to declare publicly, and for the trust to maintain a register of any financial interest that the directors may have in health or social care related organisations, which provide services to the NHS or any affiliation to health or social care related campaigning special interest groups.

Required submission:
Register of directors' interests.

Are there clear structures and comprehensive procedures for the effective working of the NHS foundation trust board?

- This aims to clarify how the applicant intends governance structures to work in practice. In particular the following must be clear:
 - Reporting lines are in place (e.g. to ensure overall performance is managed);
 - Arrangements are in place to manage/respond to adverse performance;
 - The functions of the board of governors, how it will exercise its functions and how governors will be supported to maximise their contribution to the trust;

- The functions of the board of directors and how it will exercise its functions; and
- How interactions between the two boards will work.

Required submissions: *Constitution; governance arrangements and rationale together with appropriate commentary*

5.3.2.2 Does the trust board believe that the trust has the organisational capacity necessary to deliver the business plan?

Is the trust board confident that the senior management has the capability and experience necessary to deliver the strategy?

- The trust board is required to self-certify that it believes that the senior management (executive directors and their direct reports) has the capability and experience needed to deliver the strategy. The evidence supporting the self-certification should be formally referenced to the pro-forma job descriptions provided in Appendix B14, which set out in detail the type and quality of experience and skills required of individuals in order to perform effectively at chief executive and finance director level.

Required submissions: *Self-certification on management capability and experience. This certification may be tested by Monitor.*

Is a selection process in place to ensure that non-executive directors have the appropriate experience and skills?

- The trust board is required to self-certify that it has a selection process and training programmes in place which ensures that non-executive directors have the appropriate experience and skills. The evidence supporting the self-certification should be formally referenced to the pro-forma job descriptions provided in Appendix B14 which set out in detail the type and quality of experience and skills required of individuals in order to perform effectively at chair and non-executive director level. The self-certification should also include consideration of the composition of board sub-committees.

Required submissions: (i) *Self-certification on the selection process for non-executive directors. This certification may be tested by Monitor.* (ii) *Details of appropriate training courses, either attended or to be attended, designed to skill up key areas of requisite knowledge and understanding of the board.*

Are adequate management structures in place to deliver the strategy?

- The trust board is required to self-certify that it believes that the roles identified match with the requirements of an NHS foundation trust.

Required submissions: *Self-certification on management structures. This certification may be tested by Monitor.*

Are the necessary management processes in place to deliver the strategy?

- The trust board is required to self-certify that the necessary performance management and risk management processes are in place.
- The purpose of this question is to ensure that the following processes are in place, are robust and have been demonstrated, to Monitor's satisfaction, to be effective.
- **Performance management:** in particular Monitor will assess whether:
 - performance measures have been defined and are being monitored;
 - reasonable targets have been identified for these measures;
 - a robust system is in place for managing performance against the targets (e.g. transparency of system/timeliness of reviews);
 - reporting lines are in place (e.g. to ensure overall performance is managed); and
 - arrangements are in place to manage/respond to adverse performance in the following areas:
 - finance;
 - clinical and other operations;
 - organisation/HR; and
 - long-term strategy.

- **Risk management:** in particular Monitor will assess whether:
 - all key risks are identified (this includes those specific to NHS foundation trust status);
 - risk areas are monitored and this is integrated with performance management;
 - contingency plans are in place;
 - risk scenarios and contingency plans are subject to regular updating; and
 - reporting lines are in place (e.g. to ensure that overall risk is managed).
- **Effective management of joint ventures and partnerships:** in particular Monitor will assess whether:
 - governance and management of joint ventures and partnerships (including section 75 agreements) are clearly set out and understood by the board;
 - who the partners are, what their roles are and whether they are clear to all parties;
 - clear rules exist to govern use of any pooled budgets and appropriate management structures exist to enforce and monitor these rules;
 - a protocol exists for resolving any disputes arising within the joint venture or partnership; and
 - a process for dealing with overspends and underspends exists and that its effects are fully understood by the trust.
- **Planning:** the trust board is required to self-certify that it is confident that effective strategic planning processes are in place.

Required submissions: *business plan; self-certification on performance management, risk management and planning; direct evidence on risk and performance management; relevant reports and associated action plans from inspectorates, including the Healthcare Commission, the Commission for Social Care Inspection, the Mental Health Act Commission and the National Oversight Group for High Security Hospitals.*

5.3.2.3 How is the applicant performing against existing targets and national core standards?

How is the board assured that it has action plans in place to meet existing targets and national core standards?

- The trust board is required to self-certify that plans are in place to ensure ongoing compliance with all existing targets (after the application of thresholds) and national core standards and with all known targets going forward. The trust board is also required to self-certify that plans are in place to ensure ongoing compliance with the Health Act 2006: Code of Practice for the Prevention and Control of Healthcare Associated Infections (“The Hygiene Code”)⁵. The self-certification should be supported by the direct evidence of achievement of targets and standards and appropriate action plans to ensure compliance going forward.

Required submissions: *self-certification on targets and standards. Available evidence for the self-certification made will be analysed by Monitor as appropriate. Copy of applicant’s self assessment on healthcare targets and standards. Historical track record of target achievement together with expected trajectory. Action plans to address underperformance.*

Monitor’s approach to authorising trusts which are failing healthcare targets and standards

Monitor may authorise an applicant trust which is not meeting healthcare targets and standards but this will depend on the severity of the failure. Both of the tests that Monitor applies when assessing the failure must be passed for authorisation. The two tests are set out as follows:

Test 1 – Service performance score based on weightings in the Compliance Framework⁶

If the applicant trust achieves a governance score on service performance of less than 1, then the trust can be authorised with a green rating on service performance.

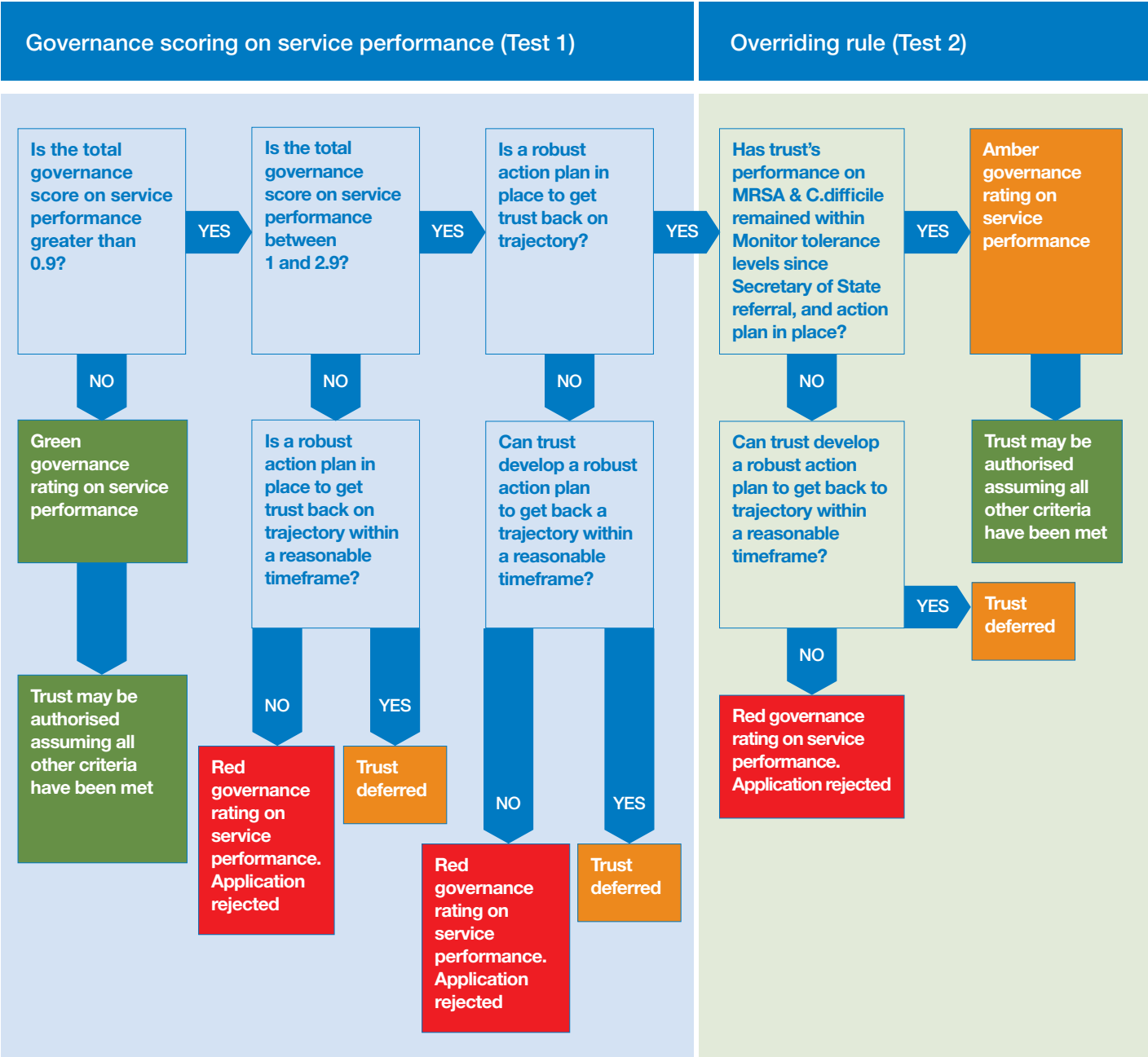
However if the rating shows a score which is between 1 and 2.9, to be authorised an applicant trust must demonstrate that it:

- has a clear and robust action plan to get back on trajectory (i.e. achieve a service performance score of less than 1) within a reasonable timeframe; and
- meets the overriding rule test for MRSA and C. difficile (as set out below).

In these instances applicants will be issued with a side letter and amber governance rating at authorisation. The timeframe to get back on trajectory will be considered on a case by case basis.

⁵ From April 2009, the Care Quality Commission (established under the Health and Social Care Act 2008) will exercise functions in relation to healthcare associated infections.

⁶ Monitor’s approach to weighting targets and associated tolerance levels for achievement of the national targets and standards is set out in the Compliance Framework Appendix B.



Test 2 – Overriding rule in relation to MRSA and C. difficile

Monitor's Board has considered the Department of Health's publication "*Clean Safe Patient Care*" and the fact that no application for NHS foundation trust status will receive Secretary of State support unless the trust is demonstrably delivering sustained improvement on tackling infections. In consequence, for applicants referred to Monitor after 1 March 2008, Monitor has introduced a threshold for deterioration against trajectory and year end targets for MRSA or C. difficile, below which an applicant will not be authorised. The tolerance level for MRSA will be less than 10% deterioration against the target since Secretary of State referral with a de minimis level of 12 cases per annum. For C. difficile, the tolerance level will be less than 10% deterioration with no de minimis level.

Therefore, assuming a governance score on service performance of between 1 and 2.9 is achieved, applicants must demonstrate that:

- their performance on MRSA has not deteriorated by more than 10% (with a de minimis level of one case per month) since Secretary of State referral;
- their performance on C. difficile has not deteriorated by more than 10% since Secretary of State referral; and
- they have a robust action plan to return performance/trajectory on MRSA and C. difficile within a reasonable timeframe.

If performance is within these tolerances and there are appropriate action plans to return to trajectory/target for MRSA and C. difficile within a reasonable timeframe, an applicant may be authorised but with a side letter and amber governance rating. The timeframe to get back on trajectory will be considered on a case by case basis.

Where, despite being within Monitor's tolerances discussed above, action plans are considered insufficient, the application may be formally deferred or rejected.

Notwithstanding this policy approach, the Board will use its discretion to deal with cases which may be exceptional. The flow chart on page 43 illustrates how this policy will work in practice.

5.4 Is the applicant financially viable?

5.4.1 Submissions

To demonstrate financial viability applicants will be expected to provide the following submissions to Monitor:

- the five year integrated business plan;
- completed financial model template – covering working capital and long term financial projections (please note that there are separate financial model templates for acute and mental health trusts to reflect the differing commissioning arrangements);
- copy of the historical due diligence report undertaken by the independent accounting firm during the SHA-led Trust Development Phase; and

- Working capital review encompassing:
 - board statement on working capital and financial reporting procedures;
 - board memorandum to support the board statement above; and
 - copy of the working capital report (including financial reporting procedures) undertaken by the independent accounting firm (note this work will be carried out during Monitor's assessment phase and must be finalised at least two weeks before Monitor's final Board decision).
- describe expected changes in case mix, nature and cost of case management, including any expected changes in the volume and cost of secondary commissioning by the trust (whether to the independent sector or to other NHS trusts);
- highlight major changes to the property portfolio;
- include analysis of the asset disposals during the plan;
- detail major initiatives, such as cost reduction programmes or new investments;

The five year business plan

Monitor will review the applicant's business plan to understand the assumptions driving it, to identify key risks and to determine whether there are adequate plans in place for the applicant to achieve its goals and manage its risks. It will also seek to ensure that the mandatory services are being provided and to verify compliance with relevant statutory requirements, e.g. the proportion of total income of the trust in any financial year derived from private charges (defined in Appendix B5). The contents of the business plan have been discussed in section 4.3.3 above.

In summary, the business plan is a key document, which should:

- explain the rationale for and detail plans for key services;
- identify key assumptions underlying projections and their relation to the local health economy;
- identify the impact of patient choice and contestability of the activity assumptions;
- explain the level of support for its proposals in the local health community, in particular the level of commissioner support;
- identify key risks to execution of the strategy;
- clarify major action and contingency plans to mitigate key risks; and
- describe the nature of any major partnerships or joint ventures (including section 75 contracts prevalent in mental health trusts), in particular the roles and responsibilities of the parties involved and how costs, risks (including default and dissolution) will be managed and how the benefits are to be shared.

Financial model – incorporating five year long-term annual projections and two year monthly working capital projections

Monitor will evaluate long-term financial projections to gauge the financial viability and sustainability of the applicant's business plan. The review of the key assumptions underlying the projections will include sensitivity and scenario analyses to evaluate the impact of the key risks faced by the applicant.

To facilitate this review, applicants will be provided with a financial model template which should be completed to support the business plan (please note that there are separate financial model templates for acute and mental health trusts to reflect differing commissioning arrangements). Applicants will be required to populate this model with their long-term financial projections covering projected I&E, balance sheet and cash flow information for five years, or up to ten years if an applicant has a major PFI scheme. The financial model will incorporate two years of financial history and will also have the functionality to produce two years of monthly projected I&E, cash flow and balance sheet information to facilitate the working capital review (see below). The financial model template will require the applicants to detail the assumptions that support the projections (the assumptions should cross-reference to other relevant documents, e.g. the business plan). Monitor will use this information to perform sensitivity and scenario analysis to gauge the financial sustainability of the trust. The applicant should expect to be contacted by Monitor if further information or clarification is needed.

The long-term financial projections will be more detailed than those included in the business plan and will enable evaluation of key risks in a consistent format. This will allow Monitor to test the robustness of the applicant's projections in relation to its key risks. Monitor will also benchmark key assumptions against other similar trusts. Clearly, these financial projections should be consistent with the business plan and will form the basis for discussing the applicant's future plans at the board-to-board meetings. Monitor will only consider changes to the long-term financial projections in exceptional circumstances.

Working capital review

The trust board will need to provide Monitor with a statement that it has sufficient working capital to meet its obligations for the first twelve months of operation.

This board statement will be reviewed and reported on by independent accountants. The specific brief of the independent accountant will be to provide a professional opinion on the board's statement that the applicant has sufficient working capital to meet its obligations for the first twelve months of operation. Together with its statement, the board will also need to provide a board memorandum, which sets out the projections, key assumptions and sensitivities that support the board's statement covering the first twelve months of operation. This memorandum will also need to set out the projections for the second twelve-month period (months 13 – 24) together with the risks associated with their achievability. The independent accountants will also need to comment on the projections and risks described in the memorandum.

To facilitate the preparation of the board memorandum, the financial model template provided by Monitor has been designed to produce up to two years of monthly I&E, cash flow and balance sheet information once phasing assumptions have been incorporated. The financial model has been designed to ensure that applicants only have to populate one model. There are checks incorporated into the model to ensure consistency between the monthly projections and the annual projections.

Financial reporting procedures

As part of the working capital review the trust board and the independent accountants will also be asked to report on the trust's financial reporting procedures.

This will involve reviewing the trust's corporate governance arrangements, high level controls, risk management processes, management reporting framework, financial controls and reporting procedures and audit arrangements. The initial work on this area will be conducted as part of the historical due diligence work undertaken by the independent accounting firms during the SHA-led Trust Development Phase (see section 4.2) but the final opinion will be provided as part of the working capital review.

Working capital facilities

It is accepted by Monitor that in order to provide the requisite opinion by the trust board and the independent accountants, some applicants may require working capital facilities. Applicants should therefore establish whether they can secure the necessary facilities from commercial banks. It is recommended that applicants engage in dialogue with potential providers of working capital facilities early on in the process. Working capital facilities will need to be committed facilities (i.e. not repayable on demand). Applicants should undertake a detailed review of the terms and conditions of any proposed facility agreements to ensure they are satisfied that the facility is committed. Applicants are encouraged to contact the Foundation Trust Network or existing NHS foundation trusts for guidance in this area.

The facilities should be expressed to be conditional on achieving NHS foundation trust status. If this looks unlikely to be possible, applicants should inform both Monitor and the Department of Health. Without sufficient working capital an applicant will not be authorised.

It should be recognised that "clean"/unqualified opinions from the independent accountants on the adequacy of working capital and financial reporting procedures will be a necessary requirement for the applicant to be authorised. However, the fact that a clean opinion has been issued is not in itself sufficient to ensure NHS foundation trust status.

The responsibilities of the trust board in this working capital review process include:

- populating the model provided by Monitor;
- providing a copy of the populated model to Monitor and the independent accountants;
- providing Monitor with a board statement confirming sufficiency of working capital (a pro forma is provided in Appendix B9);
- producing a board memorandum, which sets out the projections, key assumptions and sensitivities that support the board statement covering the first year of operation together with the projections for the second year;
- providing evidence that the board memorandum, stating sufficiency of working capital, has been reviewed and approved by the trust board at a trust board meeting; and
- reporting on financial reporting procedures.

The responsibilities of the independent accountants in this working capital review process include:

- providing a professional opinion to the trust board and Monitor's Board on whether they have made their board statement after due and careful inquiry;
- preparing a report documenting the findings of the working capital review. This report should cover the period of the professional opinion as well as the projections for the second year of operation;
- reporting on the trust's financial reporting procedures; and
- providing copies of their opinion and report to the trust board and Monitor.

5.4.2 Financially viable?

This section provides more detail on the questions Monitor will ask when assessing the financial viability of an applicant's business plan.

5.4.2.1 Is the business plan financially viable and sustainable?

This question addresses the extent to which the board demonstrates that the trust can, with a high likelihood, generate a sustainable net income surplus by year three of the business plan, unless exceptional circumstances exist, and maintain a reasonable cash position.

In this context:

- Net income surplus means positive net income after dividend payments on Public Dividend Capital;
- By year three of the business plan is a timeframe that will give the trust time to adapt to a number of changes occurring within the healthcare system;
- Sustainable means that a net income surplus is deemed sustainable beyond four years against a reasonable set of downside risks. In assessing sustainability Monitor will deduct one-off income and add back one-off expenses from the reported position to understand the underlying performance;
- With a high likelihood means that a net income surplus is achievable both in a realistic base case as well as a plausible downside case;

- The assumptions included in the realistic downside case may vary depending on economic circumstances. The allowance made for any contingency plans will be linked to the assessment of management capability, experience, structures and processes as set out in section 5.3.2.2.
- A reasonable cash position means that the cash position is sufficient at the end of the fifth year of projections under both a realistic base case and the downside case; and
- Unless there are exceptional circumstances, the financial risk rating at authorisation and in the first full year as an NHS foundation trust must be a minimum rating of 3 (the basis of calculation of financial risk ratings is set out in the *Compliance Framework*).

Within this Monitor will ask some more specific questions:

- **What major changes are proposed in the business plan?**

This question aims to address the extent to which the applicant proposes to make use of its NHS foundation trust status to drive change and innovation through its business plan.

- **Is there a realistic set of risk scenarios with a clear set of contingency plans?**

This aims to assess the robustness of the applicant's key forecasts and financial viability and variation in its underlying assumptions about revenue growth, cost savings, etc. The question also addresses the extent to which risk has been mitigated by a clear set of contingency plans.

In answering this question Monitor will first analyse the scenarios presented by the applicant in its business plan and also test the key assumptions made by the applicant in its projections, in order to assess the impact on risk and opportunity. In doing this Monitor aims to determine the strength of the applicant's financial position when exposed to a variety of risks. Monitor will also assess the extent to which the trust board has identified means by which key risks can be mitigated and whether contingency plans exist.

- **What risks arise from the trust's existing partnership and joint ventures?**

For each of its significant partnerships (including section 75 contracts), the trust should be able to provide a clear description of the inputs into the joint venture, the expected outputs and any risks arising from the contract (e.g. obligations to fund defaults by the partner or shared legal liability).

Mental health trusts in particular are vulnerable to risks associated with poorly structured contracts. A checklist has been developed to help mental health trusts assess their current arrangements. This is available in Appendix B16.

Mental health trusts may also be exposed to risks associated with secondary commissioning. Secondary commissioning relates to arrangements where mental health trusts are contracted by commissioners to commission/contract for services externally (including any out of area treatments – OATs). OATs can be very costly and if they are part of a secondary commissioning arrangement in which the risk lies with the mental health trust, then they can pose a material risk to the trust's financial plans.

To mitigate against this risk, mental health trusts should seek to ensure that they have appropriate contractual and risk arrangements in place with commissioners to minimise the financial risks of any secondary commissioning agreements, especially with regard to high cost OATs.

Required submissions: *Integrated business plan, long-term financial projections, working capital review*

5.4.2.2 Is the business plan internally consistent?

Are the resources (people, costs and facilities) consistent with the projected service activity and funding?

The purpose of this question is to gain assurance that the level of activity projected in the applicant's plans can be supported by the assumed cost base and whether any significant changes (e.g. in unit costs of activity) have been clearly explained.

Monitor will examine the assumptions and rationale underlying the applicant's projections and business plan and also undertake peer comparison (benchmarking) and historical analysis of service activity, financial performance and the historical accuracy of budgeting and forecasting.

Required submissions: *Integrated business plan, working capital review, long-term financial projections*

Are the capital assumptions consistent with the projected service activity?

This question seeks to determine whether the applicant's assumptions regarding asset base and capital expenditure are capable of supporting the level of service activity projected. It also seeks to assess whether the capital expenditure assumptions can be funded by forecast operating cash flows, financing cash flows (e.g. borrowing) and capital structure.

Monitor will examine the assumptions and rationale underlying the applicant's capital expenditure projections and the feasibility of the proposed capital structure and future borrowing requirements. Specifically, Monitor will look at the maintenance and growth projects planned and consistency of the proposed borrowing with the anticipated Prudential Borrowing Limit.

Proposed borrowing levels should be based on the *Prudential Borrowing Code* in force at the time of application. Details of the requirements of the *Prudential Borrowing Code* are set out in Appendix B11.

Required submissions: *Working capital review, long-term financial projections*

Is the implementation plan clear and consistent (e.g. cost improvement plans, recruitment and borrowing)?

This question seeks to assess the overall robustness of the implementation plan by considering the key programmes, initiatives and investments contained in the applicant's business plan and factored into the projections and assessing the extent to which clear and achievable plans exist for them.

Monitor will conduct the assessment through reference to the business plan and discussion with the applicant and stakeholders in the local health economy.

Required submissions: *Integrated business plan*

5.4.2.3 Does the business plan provide a level of activity and mix of services consistent with patient and service user needs and the requirements of the 2006 Act?

Does the plan include the mandatory services?

This aims to ensure that the applicant's planned mandatory services meet the mandatory activity levels and service mix agreed with the commissioners.

Required submissions: *Schedule of services (see section 5.5)*

Does the plan make acceptable assumptions about property and asset disposals?

This aims to ensure that the applicant's business plan and financial projections do not incorporate the disposal of property or assets required to support the proposed mandatory service level and mix.

Required submissions: *Integrated business plan*

Are the private patient income assumptions (if applicable) appropriate?

The definition of private patient income is set out in Appendix B5.

The applicant will be required to outline the private patient income assumptions that it has built into its business plan and projections as well as the method of categorisation and calculation.

Monitor will ensure that the applicant's business plan and projections reflect the provisions on private health care and that assumptions about private patient income are consistent with Monitor's interpretation of the 2006 Act.

Required submissions: *Integrated business plan, details on private patient income assumptions (where not included or not explicit in integrated business plan)*

Is the strategy supported by key commissioners?

This aims to ensure that there is commissioner support for the applicant's business plan and projected revenue streams.

The applicant will be required to outline the Local Development Plan/PCT Strategic Plan; the commissioning assumptions built into the plan and provide evidence that projected activity volumes and income are stable and sustainable.

To provide the professional opinion to trust boards referred to in section 5.4.1, the independent accountants will have to satisfy themselves that the income projections for NHS patients and service users are reasonably secure. This is likely to require signed contracts or the intention to sign contracts between the applicants and their commissioners of healthcare. For other income, the assessment may be based on historical performance and market assessments, or a contractual basis may be required, depending on the nature of the income.

Currently, mental health services are predominantly commissioned under block contracts. There are a number of risks associated with the block contract model, potentially leading to instability of funding flows. The Department of Health has developed a new model contract to cover the commissioning relationship between mental health NHS foundation trusts and their commissioners. This contract is due to be released for adoption from April 2009. Mental health applicant trusts using this contract as the basis for negotiations with their commissioners need to ensure they can demonstrate 18 months of contracted income. Further information on mental health contracting can be found in Appendix B17.

Required submissions: *Integrated business plan*

Does the plan fit with local and national service needs?

This question aims to identify the degree to which the applicant's plans are aligned with the needs of the local and national health economies. The extent to which key stakeholders have been consulted and their input taken into account will be assessed.

The applicant will be required to provide evidence of the ways in which its business plan responds to local and national service needs.

Monitor will engage in discussions with key stakeholders such as the SHA and PCTs, to establish the extent to which the business plan reflects local and regional health economy needs. In particular, Monitor will check that stakeholders have supported the strategy from the perspective of an integrated and consistent overview of the local health economy and all likely developments in it.

Required submissions: *Integrated business plan*

5.5 Schedule of services

The purpose of these schedules is to define the mandatory services which Monitor will require the NHS foundation trust to provide in the context of section 43 of the 2006 Act. The underlying philosophy is that the provision of services contracted or intended to be contracted by NHS commissioners or third party education and training commissioners should be mandated in order to underpin the effective functioning of the commissioning systems.

Applicants will need to complete and submit the following schedules during the Monitor assessment phase. For additional guidance on their completion see Appendices B6(a), B6(b), B6(c) and B6(d):

Schedule 2 – mandatory health services workbook:

Clinical health services for provision to NHS patients or service users should be considered mandatory and included in the workbook (details of social care services provided to other service users by both mental health and acute trusts should also be included). The term mandatory refers specifically to the activity volume by service type that is agreed in contracts, or is understood will be agreed in contracts, between commissioners and the applicant.

Schedule 3 – mandatory education and training services workbook:

Education and training services that will be designated as mandatory will be those services provided to third parties, for which contracts have been signed or where an understanding exists that contracts will be signed with commissioners or other third parties.

The workbooks will form the basis for mandatory services. Where commissioners or third parties and the applicant are unable to reach agreement to either sign contracts or intend to sign contracts, the services may be authorised but the applicant will not be required in its authorisation to provide them. Monitor reserves the right to vary the goods and services which the NHS foundation trust is required to provide in order to ensure the continuity of local service provision. These details will form a schedule 2 and 3 to the authorisation and must be provided as early as possible.

Mandatory health services workbook – attachment 1:

Applicants must provide a summary indicating which commissioners have signed contracts or are understood to be going to sign contracts; any significant activity that is expected to be undertaken outside of legally binding contracts should also be identified. This workbook should also cover commissioner support received through section 75 agreements (with support separately identified for each party) and income received from commissioners to fund any secondary commissioning undertaken by the trust.

Payment by Results for mental health trusts continues to be developed. An approach acceptable to Monitor is set out in Appendix B18. Over time this approach will be developed to reflect any developments in a tariff for mental health and/or movement to a nationally consistent list of service descriptions/currencies.

5.6 Service-line reporting in assessment

Monitor issued *The Monitor Assessment Process – a Consultation on the Introduction of Service Line Management* on 24 October 2007 and the consultation closed on 18 December 2007. As a result of this consultation Monitor, made the following decision in relation to requirements for Service-line Reporting (SLR) in the assessment process:

The provision of financial information in SLR format will not be a requirement for authorisation. However, applicants are encouraged to continue their development of SLR to enhance the financial reporting of the organisation. Further information on SLR is available on Monitor's website.

5.7 How Monitor will work with applicant trusts

This section gives an overview of the process Monitor's assessment team goes through to complete the assessment of NHS foundation trust applications.

5.7.1 Monitor's roles and responsibilities

Monitor's role is to assess those applicants that have successfully passed through the SHA-led Trust Development Phase having gained the support of the Secretary of State to move forward to Monitor's assessment phase.

Monitor will conduct its assessment in accordance with the guidelines set out in section five above. Monitor's ultimate responsibility is to approve, reject or defer an application based on its assessment of the application. The process that Monitor uses to assess the application is summarised below. Further details of the outcome of assessment is provided in section six.

5.7.2 Monitor's team

Once a trust's application has been formally passed to Monitor by the Secretary of State, the applicant trust will be contacted by Monitor to inform them how to initiate their application. Each applicant is assigned an assessment team, which is led by a senior assessment manager. It is usual for the assessment team to spend a number of days visiting the trust during the assessment process conducting interviews and analysis.

5.7.3 Interviewing key stakeholders

During the assessment process the applicant's submissions will be reviewed and key personnel from within the trust will be interviewed. The assessment team will contact the applicant at the beginning of the assessment process to indicate who they wish to interview. It is usual to expect interviews with the board, board sub-committees, the finance team and clinical directorates. Monitor will also conduct interviews with other external bodies and parties, including, but not limited to, external auditors, internal audit, SHAs, lead commissioning primary care trusts, Healthcare Commission, Care Quality Commission (if applicable) and Department of Health teams, e.g. those involved with infection control and other national standards and targets.

5.7.4 Review of third party reports

As noted in section four above, during the SHA-led Trust Development Phase independent accountants will be appointed to conduct a historical due diligence report on applicant trusts. This report will provide an overview of a trust's historical performance and underlying financial position together with a review of the financial reporting arrangements of the applicant. Monitor will review this report to assess the historical position of the trust and will use the information provided to help to assess the robustness of the business plan.

Monitor's assessment team will also maintain a dialogue with the independent accountancy firms conducting the working capital review during the assessment process and will review these reports as part of the assessment process, along with any other reports that may be received from other external third parties.

Monitor will not be involved in the SHA-led Trust Development Phase which will be organised and managed entirely by SHAs. Monitor does not ordinarily review any of the work conducted during this phase with the exception of the final business plan and the historical due diligence report.

5.7.5 The board-to-board presentation

As part of the assessment process, each trust is given the opportunity to present its business plan to Monitor's Board at a board-to-board meeting. This meeting is held midway through the assessment period. The trust executive and non-executive board members will be expected to attend this meeting. Monitor's Board will ask questions and provide challenge on the application. Applicants will not be provided with the details of the questions they will be asked.

The questions will pick up issues identified through the assessment and will focus on the three key areas:

- is the trust legally constituted?;
- is the trust financially viable?; and
- is the trust well governed?

Applicants should be aware of the importance of this meeting and that what is said by the trust and how its representatives respond to questions will be used by Monitor to help formulate its views on the three key areas of the assessment process. In particular, this meeting allows the applicant board to demonstrate that it is aware of the risks facing the trust and to provide details on how these risks can or have been managed and mitigated. The meeting also provides Monitor's Board with a key opportunity to question the non-executive directors of the trust to determine whether they have the requisite skills to be able to challenge effectively the executive team. As a result, Monitor's Board can obtain additional evidence as to the appropriateness of the self-certification on organisational capacity for each applicant.

5.7.6 The Board decision meeting

Towards the end of the assessment process the assessment team will finalise papers to present at a Board decision meeting, where the application will be formally considered by Monitor's Board. A decision may be made at this meeting to authorise, defer or reject a trust's application.

5.7.7 Freedom of Information Act considerations

As a public authority, Monitor is under a duty to comply with the provisions of the Freedom of Information Act 2000. In the event that, in consequence of a request for information under the Freedom of Information Act 2000, Monitor may be required to disclose any information supplied to Monitor by an applicant trust or which has been acquired in consequence of the application process, Monitor will notify the applicant trust of the request and will consult with the applicant trust prior to any disclosure of information.

For the application process to work effectively there must be a free exchange of information and views between Monitor and an applicant trust. That free exchange is in the interests of both Monitor and the applicant trust. It is also in the public interest. Monitor will respect the confidentiality of information supplied or acquired in the course of the application process, in so far as that is not inconsistent with Monitor's legal obligations under the Freedom of Information Act. In particular, Monitor would regard the minutes of meetings between Monitor and the applicant trust as being confidential and, if required by law to disclose such minutes, would do so only after confidential or personal information had been excised.

5.8 Applicant responsibilities

It is the responsibility of each applicant trust to ensure that they cooperate fully with all parties during Monitor's assessment. The application and assessment process is very demanding on the time of senior management at the trust. It is therefore advisable that each trust plans and prepares accordingly to ensure they have sufficient resources and where necessary, additional resource to cope with the extra demands that the application and assessment process will place on them, particularly within the finance department.

In addition, a trust's responsibilities will include, but not be limited to, the following:

- each trust must ensure that it meets all deadlines for the submission of information to both third parties and Monitor;
- staff (including board members) must make themselves available to attend and participate in meetings as advised by Monitor or third parties; and
- a trust must advise Monitor and other third parties of anything that comes to light during the assessment process (that was not previously identified or included within a trust's submission) which significantly changes their business plan assumptions, financial viability, governance arrangements or constitution.

Whilst the assessment process has been funded, it is the intention of both the Department of Health and Monitor that costs are kept within planned levels. It is therefore essential that cost overruns, particularly any additional expenditure associated with third party involvement, are avoided. If any cost overruns are deemed to have been caused by an applicant trust unnecessarily, the trust concerned may be required to settle these costs.

6. Outcomes from the application

Applicants will be informed of the outcome of Monitor's Board decision meeting no later than the day before the proposed authorisation date (i.e. groups to be authorised on the 1 April will be informed by 31 March). It is usual for trusts to be notified by telephone in the first instance one day prior to the official notification of the application outcome decision. This initial notification is subject to strict press embargo. Under no circumstances must a trust communicate the results of its application to any other parties, including (but not limited to) its employees, stakeholder groups and organisations, or any other third parties including the press, until it has received formal notification of the application decision from Monitor, which will be outlined within an authorisation letter. Applicant trusts may contact Monitor's communications team in the week prior to decisions being made to discuss the protocol for announcements on the decisions.

The possible outcomes from Monitor's Board decision are:

- authorisation (6.1);
- rejection (6.2); or
- deferral (6.3).

The implications of these outcomes are discussed below:

6.1 Authorisation

Monitor has been granted powers under section 35 of the 2006 Act to authorise applicant trusts. If the decision to authorise an applicant is made at Monitor's Board's decision meeting, the trust concerned will be notified formally by letter and will be issued with an authorisation.

The authorisation is made up of three parts and it is accompanied by six schedules as follows:

Part 1 – The authorisation

Part 2 – Interpretation and construction

Part 3 – Conditions of authorisation

Schedule one – The constitution:

This is the trust's constitution as approved by Monitor. The proposed constitution will be reviewed by Monitor's legal team as part of the application process.

Schedule two – Mandatory goods and services:

The mandatory goods and services schedule sets out volumes or amounts of services that will be provided under legally binding contracts with the commissioning bodies.

Schedule three – Mandatory services (education and training):

The mandatory education and training schedule sets out the volumes or amounts of training and education services that will be provided to third parties under legally binding contracts.

Schedule four – Private healthcare:

This schedule sets out the proportion of total income of the trust in any financial year derived from private charges (i.e. the care of private patients) and is expressed as a percentage.

Schedule five – Borrowing limits (Prudential Borrowing Code):

This schedule sets out the trust's borrowing limits for the purposes of working capital and longer term investment and is subject to annual review. Borrowing limits are defined by the *Prudential Borrowing Code*. There are five ratios used to determine borrowing limits (see appendix B11).

Schedule six – Information (statutory obligations):

Schedule 6 lists the information that trusts are legally obliged to provide post authorisation to other parties. The list has been devised by Monitor in consultation with the Department of Health and the Healthcare Commission. This schedule is subject to regular updating and can be found on Monitor's website.

Side letters

In some cases, trusts will be authorised on the basis their application satisfies all statutory requirements but will receive a side letter detailing matters which should be addressed by the trust within, where appropriate, a specified timeframe.

Variation of authorisation

An NHS foundation trust may apply to Monitor to vary its authorisation. A formal process exists to vary the authorisation, the details of which can be found on Monitor's website.

Compliance regime

Once a trust has been authorised they will be subject to monitoring within our regulatory framework which has been set out in the *Compliance Framework* (available on Monitor's website). The regulatory framework has been designed to allow NHS foundation trusts to make the best use of their freedoms whilst operating within boundaries as outlined within the terms of authorisation.

Newly authorised NHS foundation trusts are monitored on a quarterly basis and will submit a quarterly return to Monitor which outlines the trust's achievement in financial performance terms against their authorised plan, along with details on their achievement of other non-financial performance targets and measures, for example the core national healthcare targets and standards, over the same previous quarter.

Relationship management

Upon authorisation each NHS foundation trust will be allocated a Monitor relationship team and provided with each relationship team member's contact details. The role of the relationship team is to provide a first point of contact for the NHS foundation trusts for all correspondence and queries.

NHS foundation trusts should contact these allocated individuals for queries or concerns in the first instance. The relationship team members should be able to provide advice or information to address initial queries received from the trust. However, on those occasions where they are unable to they will forward the query on to the relevant party within Monitor and advise the trust accordingly.

6.2 Rejection

If the decision is taken to reject an application, the trust concerned will be notified formally by letter. The letter of rejection will set out the areas where the application falls short of Monitor's assessment criteria. The assessment team will, if requested by the trust, visit the applicant to give a formal debrief. Whilst the assessment team will welcome constructive feedback, the debriefing meeting itself will not be an opportunity to challenge the assessment decision.

If an application is rejected, an unsuccessful applicant trust which wishes at some future date to reapply for authorisation as an NHS foundation trust will have to go through the application process again. The support of the Secretary of State for the new application will have to be sought and obtained before a new application can be made to Monitor. The application process will need to be repeated including the holding of elections for governors. However, Monitor will not insist that a trust making a new application recruits, from scratch, members for the purpose of that application. The trust may count as members the individuals who applied to it when it made its original application provided they remain eligible to be members at the time of the fresh application. However, Monitor will want to be assured that the trust has continued to engage with the membership in particular to ascertain that the members recruited for the original application wish to be members for the purposes of future applications. Of course the trust will have to satisfy Monitor that it has taken steps to ensure that the membership of its public constituency will be representative of those eligible for membership in respect of its fresh application. The criteria which require to be met for authorisation remain the same.

6.3 Deferral

The 2006 Act does not expressly provide for the deferral by Monitor of an application. However, Monitor has discretion on whether or not to authorise an applicant trust and it is considered that Monitor has both an implied power and a discretion to defer an application.

An application can be deferred only if the outstanding issues identified as preventing a successful application are capable of satisfactory resolution and capable of being properly addressed within a reasonable period of time and are likely to be resolved or addressed within that period. Monitor will expressly define and explain those matters requiring attention.

In light of the new batching policy implemented in autumn 2007, which is designed to identify key authorisation issues upfront for early resolution, the time period generally allowed for deferrals of applications will be shortened. Monitor's Board recognises that issues falling short of a rejection decision (per the published criteria) but nonetheless preventing authorisation as determined at the Board decision meeting will be various. Such issues may be capable of rectification by the applicant itself, some may be outside the direct control of the applicant and some may be a combination of these. The period of deferral will be determined by the Board in reasonable exercise of its statutory discretion according to the nature of the issues preventing authorisation and the circumstances of the applicant's case.

Generally, the Board will determine a shorter period of deferral where issues are solely within the capability of the applicant to satisfactorily resolve. The total period of the deferral should not normally exceed 12 months. A period longer than this may frustrate the object of deferral and undermine the integrity of the application process. The period of deferral will be clearly set out in the decision letter. It will be specified as a particular date rather than a period of months from the date of the decision letter.

A trust which has had its application deferred will need to come back to Monitor on or before the specified date with a formal written request for reconsideration by Monitor of the application. Monitor's decision on the deferred application can be made outside the deferral period, but only if the trust had met the deadline specified in the decision letter. The significance of the date and the procedure to be adopted will be set out in the original decision letter. The decision letter will make it clear that if a request for reconsideration is not made on or before the date specified, the application will be treated as withdrawn. The Board will always have regard to applicant circumstances which may be described as exceptional in reaching deferral decisions.

6.3.1 Implication of deferral

Trusts that have been deferred, or where under exceptional circumstances their request for a postponement has been accepted, will not need to regain Secretary of State support prior to having their application reconsidered by Monitor. The deferred applicant will need to request a reconsideration date for their application within the time limit detailed in their decision letter if they are to avoid their application being treated as withdrawn.

The deferred applicant will need to demonstrate that outstanding issues identified have been satisfactorily resolved. Resubmission requirements are likely to vary dependent on the issues identified in the decision letter and the time that has passed since deferral to reconsideration.

However, resubmissions are likely to include but will not be limited to:

- an updated business plan – and where a trust's strategy has changed significantly it may be necessary for the revised business plan to be subject to public consultation;
- an updated financial model – readdressing the working capital and long-term financial assumptions that underpin the business plan;
- an updated self-certification on the organisation's capacity;
- an update on any changes to governance arrangements post the deferral date;
- personal profiles of any new board members;
- an updated governance strategy or confirmation that there have been no changes to the trust's governance strategy post deferral date; and
- an updated membership.

In addition, the trust may be required to provide an updated board memorandum and board statement confirming the adequacy of financial reporting procedures and working capital arrangements. An independent accounting firm will need to update their working capital report and sign a clean working capital opinion to underpin the board statement. A trust cannot be authorised unless a clean working capital and a financial reporting opinion has been provided to Monitor. Resubmissions will be subject to the same robust and rigorous assessment process as was conducted on the initial trust application.

Depending on the period of deferral a second board-to-board meeting may be held with the applicant.

Once the deferred applicant has written to Monitor to request reconsideration of its application, it will be advised of the resubmission requirements and the date by which this information must be received. The assessment team will then conduct interviews and seek any further evidence they require to complete the assessment.

6.4 Postponement

Where issues arise during the assessment process which require resolution before an authorisation decision can be made, applicants may write to Monitor to request a period of postponement. When requesting a postponement, an applicant must clearly state the reasons for the postponement, the length of period required and the actions the trust will take to address the issues identified. Monitor will consider the reasons put forward by the applicant on a case by case basis and the decision whether to accept a request for postponement is at Monitor's discretion. Monitor expects to receive requests for postponements no later than one week after the board-to-board meeting. Requests received after this date will only be considered in exceptional circumstances.

In light of the batching decision which aims to identify issues at the beginning of the assessment process, Monitor would only expect requests for postponements for issues that arise unexpectedly once the detailed assessment work commences. Monitor would not expect to grant postponements for a period of greater than 12 months unless exceptional circumstances exist.

6.4.1 Implication of a postponement

Where a request for postponement has been accepted, the applicant trust will not need to regain Secretary of State support prior to having their application reconsidered by Monitor. Monitor will write to the applicant setting out the period of postponement and a date by which the applicant will need to write to Monitor to confirm the date for reactivation. If the applicant does not write to Monitor in this timeframe their application will be treated as withdrawn.

The postponed applicant will need to demonstrate that outstanding issues identified in the request for postponement have been satisfactorily resolved. Resubmission requirements are likely to vary dependent on the issues identified, the request for postponement and the time that has passed since the postponement request.

However, resubmissions are likely to include but will not be limited to:

- an updated business plan – and where a trust's strategy has changed significantly it may be necessary for the revised business plan to be subject to public consultation;
- an updated financial model – readdressing the working capital and long term financial assumptions that underpin the business plan;
- an updated self-certification on the organisation's capacity;
- an update on any changes to governance arrangements post the deferral date;
- personal profiles of any new board members; and
- an updated governance strategy or confirmation that there have been no changes to the trust's governance strategy post deferral date.

In addition, depending on the period of postponement, the trust may be required to provide an updated board memorandum and board statement confirming the adequacy of financial reporting procedures and working capital arrangements. Further, the independent accountants may need to update their working capital report and sign a clean working capital opinion to underpin the board statement. A trust cannot be authorised unless a clean working capital and a financial reporting opinion has been provided to Monitor. Resubmissions will be subject to the same robust and rigorous assessment process as was conducted on the initial trust application.

If the request for postponement has been made after the board-to-board meeting, Monitor will inform the trust whether a second board-to-board meeting will be required. This will be determined on a case by case basis.

6.5 Withdrawal of an application

An application is treated as withdrawn if the applicant trust requests to be withdrawn from the process or if the trust does not reactivate its application in the timeframe set out in either the deferral letter or letter confirming a period of postponement. **The effect of a withdrawal is to nullify the application in full. This means that there will no longer be an application for Monitor to consider.**

A withdrawn application cannot be reactivated and continued at a future date.

If an application is withdrawn and the applicant trust wishes at some future date to reapply for authorisation as an NHS foundation trust it will have to **make a fresh application to Monitor** and go through the application process again **from the beginning**. The support of the Secretary of State for the new application will have to be sought and obtained before a new application can be made to Monitor. The application process will need to be repeated including the holding of elections for governors. However, Monitor will not insist that a trust making a new application recruits, from scratch, members for the purposes of that application.

The trust may count as members the individuals who applied to it when it made its original application, provided they remain eligible to be members at the time of the fresh application. However, Monitor will want to be assured that the trust has continued to engage with the membership in particular to ascertain that the members recruited for the original application wish to be members for the purposes of future applications. Of course the trust will have to satisfy Monitor that it has taken steps to ensure that the membership of its public constituency will be representative of those eligible for membership in respect of its fresh application. The criteria which require to be met for authorisation remain the same.

7. Tools and support

7.1 SHA guidance and support

Information on the process and the SHA assurance programme is available from your SHA:

www.northeast.nhs.uk
www.yorksandhumber.nhs.uk
www.northwest.nhs.uk
www.westmidlands.nhs.uk
www.eastmidlands.nhs.uk
www.eoe.nhs.uk
www.southeastcoast.nhs.uk
www.southcentral.nhs.uk
www.southwest.nhs.uk
www.london.nhs.uk

7.2 Department of Health guidance and support

7.2.1 Business plan templates

The business plan templates included in Appendices A3 to A7 have been designed to assist each applicant trust in completing its business plan. The contents and format of the business plan templates have been designed to ensure that the key areas that are most applicable to the assessment process have been included and are in a format that is easy to digest.

7.2.2 Consultation guidance

The 2006 Act specifies that a consultation process must be conducted with the local community and key stakeholder groups, including staff and commissioning bodies in relation to their application for foundation trust status.

This consultation will need to take place as part of the application process. The Secretary of State will not support an application to become an NHS foundation trust unless the trust meets with the requirements for consultation. These requirements and further guidance on the consultation process have been set out within *The Code of Practice on Consultation*. This, along with other consultation related information, can be found on the following website:

www.berr.gov.uk

7.2.3 Legally binding contracts

Applicant trusts will need to ensure that legally binding contracts, that draw a significant level of income to the trust, are signed off or clearly timetabled with their key commissioners by authorisation. Please refer to section 5.4.2.3 for further guidance in this area.

Guidance on NHS Contracts can be found at:

www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_064142

Guidance on NHS contracts for mental health trusts, ambulance trusts and community foundation trusts can be found at:

www.dh.gov.uk/en/Managingyourorganisation/Commissioning/Systemmanagement/DH_085048

7.2.4 NHS Foundation Trust Financing Facility

Information and guidance about the Foundation Trust Financing Facility, including how NHS foundation trusts access this resource, can be found at:

www.dh.gov.uk/en/Healthcare/Secondarycare/NHSfoundationtrust/DH_4131784

7.2.5 NHS Act 2006 partnership arrangements

Information and guidance about NHS Act 2006 Partnership Arrangements can be found at:

www.dh.gov.uk/en/Healthcare/IntegratedCare/Healthact1999partnershiparrangements/index.htm

7.2.6 NHS branding

Information and guidance in respect of requirements of NHS branding, can be found at:

www.nhsidentity.nhs.uk/

7.2.7 Foundation Trust Network

The Foundation Trust Network (FTN) has been supported by the Department of Health to provide a programme of support for NHS trusts and mental health trusts applying for foundation trust status. The programme will offer applicant trusts practical advice and guidance throughout the development of their NHS foundation trust applications and will be delivered by the FTN and key colleagues from existing foundation trusts. Further information on this programme of support can be found on the FTN's website:

www.nhsconfed.org/ftn/index.cfm

7.3 Monitor phase – tools and support

7.3.1 Financial model

Members of each applicant trust's finance team will be invited to attend an initial training workshop, which will provide advice and guidance on how to populate the model with their financial assumptions. In addition to this, a separate data book will also be provided to support the population of the model (please note that there are separate financial models for acute and mental health trusts to reflect the differing commissioning arrangements).

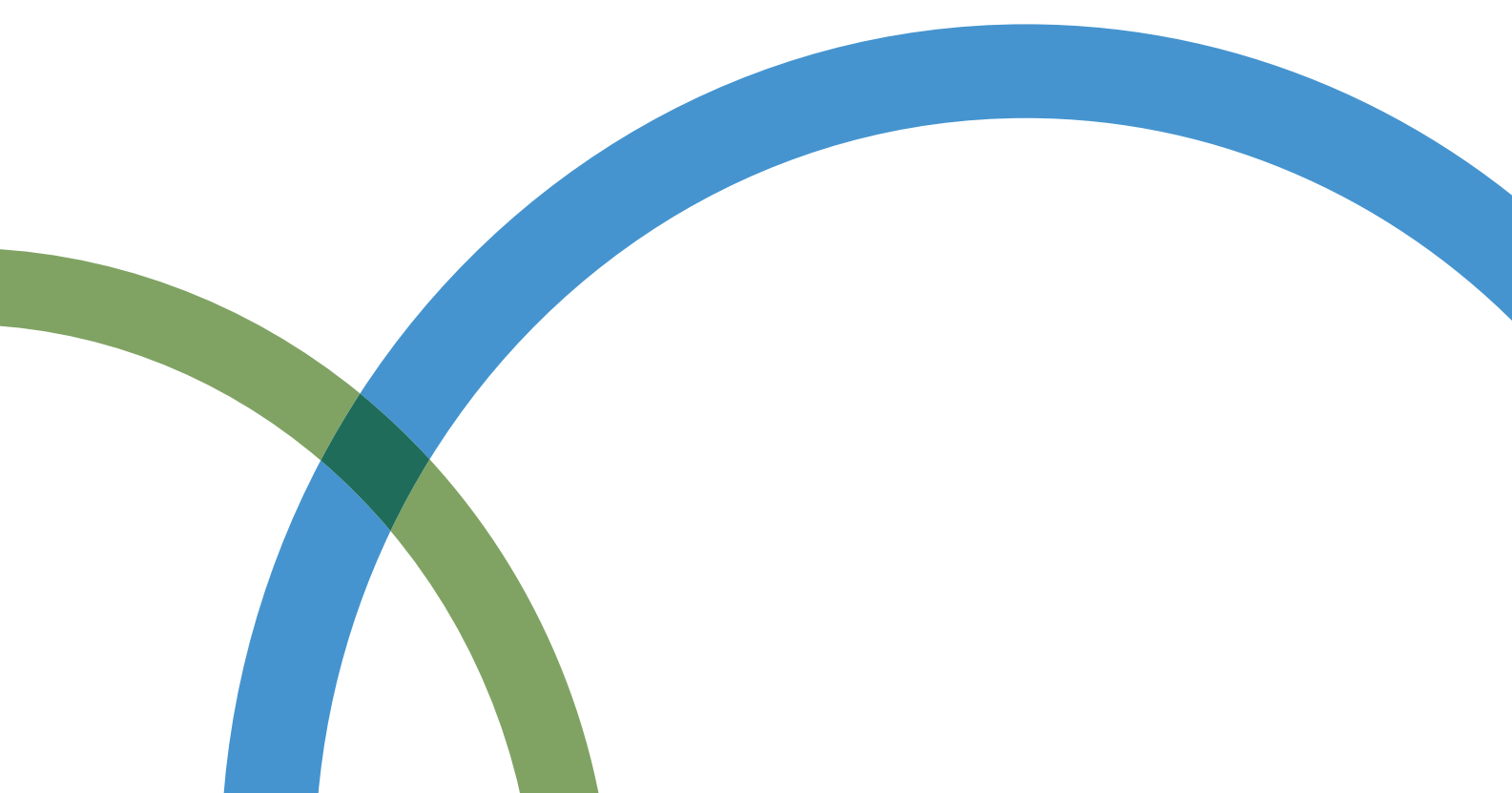
7.3.2 Board memorandum

The trust board of directors will be responsible for providing a board memorandum. The purpose of the board memorandum is to ensure that the projected working capital requirements and financial reporting procedures have been appropriately and adequately documented for the board of directors to consider, question and ultimately approve. The memorandum is a representation made by the trust's board of directors and must be carefully considered and approved by the full board. Appendix B10 provides guidance in terms of the detail and content that should be included within the board memorandum.

Queries concerning the board memorandum should be directed to the accounting firm undertaking the working capital and financial reporting review.

7.3.3 The NHS Foundation Trust Code of Governance

The purpose of the *NHS Foundation Trust Code of Governance* (the Code) is to assist NHS foundation trust boards to improve their governance practices by bringing together the best practice of public and private sector corporate governance. It is critical that boards of directors of NHS foundation trusts embody the best in corporate governance standards as they represent the first line of regulation of NHS foundation trusts. The Code complements the statutory and regulatory obligations of NHS foundation trusts and sets out a common overarching framework for the corporate governance of NHS foundation trusts. Applicants are encouraged to consult this guidance as part of their application process.



Applying for NHS foundation trust status

Overview of required submissions and guidance

Secretary of State submissions	Monitor submissions
Integrated business plan	Department of Health submissions, plus
Annexes	i Proposals and timetable for initial elections
i Monitor's long-term financial model in excel format	ii Working capital board statement and board memorandum
ii Governance rationale	iii Schedule of services
iii Model Core Constitution	iv Update on implementation of membership strategy and election process
iv Public consultation response and evidence of staff engagement and involvement	v Register of directors' interests
v Membership strategy	vi Register of governors' interests
Plus	vii Third party inspection reports
SHA applicant support form, with accompanying letter of support from SHA board or SHA chair and SHA chief executive, and SHA applicant trust support 'summary sheet'	viii Self-certification: – see Appendix 12 and section 5.3.1
	ix Direct evidence on: – performance management – risk management
Department of Health guidance available at www.dh.gov.uk	Monitor guidance available at www.monitor-nhsft.gov.uk
Integrated business plan template	Financial model and databook <i>(to be sent directly to applicants)</i>
	Audit Code for NHS Foundation Trusts
Governance rationale template	Protection of Assets: Guidance for NHS Foundation Trusts
Consultation response/ Staff engagement template	Prudential Borrowing Code
Membership strategy template	Compliance Framework
	NHS Foundation Trust Financial Reporting Manual <i>(accounts guidance)</i>
	NHS Foundation Trust Code of Governance
	Annual Plan: Advice for NHS Foundation Trusts

8. Next steps and logistics

8.1 Secretary of State support phase

Trusts formally apply to the Secretary of State for support to apply to Monitor for authorisation as an NHS foundation trust.

The formal application consists of the following documents:

- Integrated business plan;
- Appendix 1 – Long-term financial model in excel format;
- Appendix 2 – Governance rationale;
- Appendix 3 – Draft constitution;
- Appendix 4 – Consultation response and staff engagement; and
- Appendix 5 – Membership strategy.

Further detail about the integrated business plan can be found in Appendix A3.

Formal applications need to be submitted to the Department of Health on the first day, or first working day, of the month in which the SHA is to present them to the Applications Committee.

Applicants (or SHAs if SHAs have agreed to submit applications on behalf of the applicant) will be required to submit their formal submission in the following format:

- One hard copy and one copy on disk of the integrated business plan and appendices to the foundation trust team, Room 4N08, Quarry House, Quarry Hill, Leeds, LS2 7UE
- One electronic copy of the integrated business plan and appendices by email to: ftapplication@dh.gsi.gov.uk
- One hard copy and one electronic copy of the integrated business plan and appendices to the Assessment Director within the Foundation Trust Team. Contact details will be provided separately.

SHA submissions

SHAs will complete a high-level summary and an SHA support form for each application made and will submit this along with a covering letter of support from the SHA chair and chief executive or SHA board, on the first day, or first working day, of the month of the Applications Committee to the Foundation Trust Team, to accompany the trust's application. They will be asked to comment formally on the Seven Domains of Department of Health Assurance (see section 3.3) and confirm to the Secretary of State that, in the SHA's opinion, the trust is fit for purpose and ready to apply for authorisation as a foundation trust.

SHAs will be required to submit their formal applicant support documentation in the following format:

- One electronic copy of the high-level summary, completed SHA support form and SHA letter of endorsement, by email to: ftapplication@dh.gsi.gov.uk

The SHA support form and covering documentation will be used as the basis for discussion at the Applications Committee. It may be necessary for the Department of Health foundation trust team to seek clarification with SHAs on specific aspects of the NHS foundation trust application. If this is the case, the foundation trust team will contact SHAs in advance of the Applications Committee and advise the areas to be discussed.

8.2 Monitor's assessment phase

Once the Secretary of State has given support the applicant trust will be asked to submit its application to Monitor. Submissions should be sent in hard copy (one copy), soft copy on a CD-ROM and by email to Monitor (see below). A CD-ROM of submissions should be provided with the final submission.

The timetable for the assessment process will be provided to applicants in a separate letter, once Secretary of State support has been obtained. Monitor will hold a detailed dialogue with applicants. This will take the form of gathering more information and conducting interviews in person with relevant directors, management and wider stakeholder groups. During this process, trusts will be asked to present their future plans to the Board of Monitor.

Appendix B1 lists all submissions which are required.

Appendix B2 lists submissions by assessment question.

Appendix B3 provides details of other activities which trusts should be carrying out in parallel with this application.

Appendix B4 provides business plan and governance issues analysis.

All submissions should be sent to:

Applications Team
Monitor
4 Matthew Parker Street
London
SW1H 9NP

Any initial questions relating to this document or the overall application process should be directed to:

trust.applications@monitor-nhsft.gov.uk

8.3 Beyond assessment – successful applicants

Successful applicants will be subject to operating as a foundation trust within the terms of authorisation. The *Compliance Framework* sets out the approach that Monitor takes in assessing the compliance of NHS foundation trusts with the terms of their authorisation.

All foundation trusts are required to operate in accordance with the *Compliance Framework*.

Further information is available on Monitor's website:

www.monitor-nhsft.gov.uk



PART A

Department of Health Appendices

Appendix A1: Overview of submissions – SHA and Secretary of State Support Phases

SHA-led Trust Development Phase	Submissions
	<ul style="list-style-type: none"> • Regular updates of applicant trajectories, via the SHA, at agreed intervals between SHA and Department of Health Foundation Trust Team.
Secretary of State Support Phase	Submissions
	<ul style="list-style-type: none"> • Final integrated business plan – after the minimum 12 week public consultation period. To include the following attachments <ul style="list-style-type: none"> – Appendix 1 – Fully completed long-term financial model – Appendix 2 – Governance rationale – Appendix 3 – Model Core Constitution – Appendix 4 – Consultation response and staff engagement – Appendix 5 – Membership strategy • SHA application summary sheet, covering the Seven Domains • SHA application front cover, red/amber/green rated • SHA board or SHA chair and chief executive letter confirming SHA support for application
Monitor Assessment Phase	Submissions
Legally constituted	<ul style="list-style-type: none"> • Constitution including election rules (appendix 3 to integrated business plan) • Summary of statutory consultation process (appendix 4 to integrated business plan) • Membership strategy (appendix 5 to integrated business plan) • Update on implementation of membership strategy • Details of electoral process and report on initial elections
Financially viable	<ul style="list-style-type: none"> • Final integrated business plan as defined above (including any additions) • Financial model incorporating long-term financial projections and working capital projections (i.e. five year annual projections and two year monthly working capital projections) • Working capital board statement and board memorandum • Schedule of services
Well governed	<ul style="list-style-type: none"> • Business plan as above • Governance arrangements and rationale (appendix 2 to integrated business plan) • Membership strategy (appendix 5 to integrated business plan) • Update on implementation of membership strategy • Details of electoral process and report on initial elections • Register of directors' interests • Register of governors' interests • Third party inspectorate reports • Self-certification statements (appendix B12) and supporting evidence • Direct evidence on <ul style="list-style-type: none"> – Performance management – Risk management – Targets and standards

Appendix A2: Five year integrated business plan

The integrated business plan is a document that sets out the organisation's business strategy for the next five years. It will be an evolving document that will assist the applicant trust to plan for the risks and opportunities it will face as an independent, public benefit corporation.

Applicant NHS foundation trusts need to show that their proposed vision is based on local consultation, sound financial modelling (taking into account all external factors e.g. Lord Darzi's Next Stage Review, payment by results, practice-based commissioning, and patient choice), business knowledge, and the actions taken to mitigate risks, while adhering to NHS principles to ensure success for the organisation and the community it serves. The integrated business plan will need to demonstrate that effective staff involvement and commitment to service development has been secured.

The Department of Health and Monitor have worked together to provide guidance on the minimum requirements for an integrated business plan, both to address the needs of the Department of Health in the Secretary of State Support Phase, and eventually the requirements for Monitor's Assessment Phase.

In summary, the document covers the following nine sections:

- 1 Executive summary
- 2 Profile
- 3 Strategy
- 4 Market assessment
- 5 Services
- 6 Financial evaluation
- 7 Risk
- 8 Leadership and workforce
- 9 Governance arrangements

Supporting the nine sections are five appendices, which contain:

- Appendix 1 – Long-term financial model in excel format
- Appendix 2 – Governance rationale
- Appendix 3 – Draft constitution
- Appendix 4 – Outcome of public consultation and evidence of staff engagement and involvement
- Appendix 5 – Membership strategy

Attached in Appendix A3 are explanatory notes to the integrated business plan, which applicants should use to develop their NHS foundation trust application. Applicants should ensure that the integrated business plan is concise and focused in content, providing narrative and data to support the five year plan.

Appendix A3: Integrated business plan explanatory notes

The following explanatory notes are intended to provide an overview of the information required within the integrated business plan. Key issues that need to be covered by all applicants are included under each section heading.

Section One – Executive Summary

The executive summary is a short, sharp, focussed summary of the key elements of the integrated business plan. It should provide the reader with a high-level overview of the trust, its vision, the market it operates within and the performance of the trust, both historic and future projections. It should also explain why the trust is applying for NHS foundation trust status and how becoming an NHS foundation trust will help the trust deliver its vision.

This section should link to the detail within the later sections of the integrated business plan.

Required Elements:

Vision and strategy

- Overview of the trust vision statement and strategy

Rationale for NHS foundation trust status

- Why does the trust wish to be an NHS foundation trust?
- How will the trust exploit the freedoms?
- Culture and environment to be created.

Market assessment – overview of local health economy, covering:

- demographics and demand;
- competitive factors, e.g. impact of private providers, independent sector and NHS competitors;
- impact of choice; and
- analysis and impact assessment of the market place, including core and non-core business.

Performance overview – summary table covering historical and projected:

- financial performance; and
- non-financial performance (e.g. standards and targets)

SWOT analysis

- Summary SWOT (strengths, weaknesses, opportunities, threats) analysis (see page 76)

Key risks

- The financial impact on the organisation
- Any mitigating actions proposed
- Assessment of likelihood for each risk

Leadership and Management

- Skills and experience profile
- Board capability and capacity
- Board development

Key strengths	Key weaknesses
<ul style="list-style-type: none"> • Low reference costs in several specialties (cardiology, oncology, neo-natal services) • Shorter inpatient lengths of stay in target specialties • Good clinical outcomes in target specialties • Dedicated team of staff with strong clinical/financial/executive ties 	<ul style="list-style-type: none"> • Land-locked sites and capacity constraints in following areas: <ul style="list-style-type: none"> – ITU beds – Outpatient clinic – Diagnostics – Radiotherapy • Poor IT systems in need of investment • Patient transport/accessibility issues • Severe staff and patient parking problem
Opportunities	Threats
<ul style="list-style-type: none"> • Increase activity in more specialist areas (cardiology, oncology, neo-natal services) • Potential to share clinical and back office support services with neighbouring acute NHS trust • Save costs and release capacity by moving more activity to a day case setting 	<ul style="list-style-type: none"> • Commitment to delivering electronic patient records • Loss of volumes in new environment of patient choice • Higher national decontamination standards

Example summary SWOT analysis

Section Two – Trust profile

In this section, assume the reader knows nothing about the organisation.

This section will cover the basic details of what the trust is and the type of services it provides to the local population. It should inform the reader of how these services are provided, and provide an overview of the key achievements in recent years.

It is expected that this section will be completed at an early stage, as applicants should be aware of, or have access to, all of the information required and be able to present it without difficulty.

It is important to remember within this section that this document presents a profile of the business. Avoid being too clinically biased in the information provided, or concentrating on service delivery in isolation.

Required Elements:

Overview should contain:

- the basic details of the trust, e.g. facts on size of population served, the type of trust and the number of sites the trust operates from;
- main commissioners (see table on page 77);
- staff numbers (whole-time equivalents) and the number of beds; and
- organisational structure.

Range of services and activity summary table detailing:

- services and relative size of each service.

Finance summary table providing:

- high-level financial information (i.e. turnover, asset base, reference cost index, etc.)

Performance – summary describing:

- historical performance against key healthcare targets.

Contractual information should provide information on any current significant contracts including anticipated value/cost and expiry date.

Other procurement arrangements – details of:

- shared service centres, national contracts, etc.

Joint venture information. Include details of:

- the roles and responsibilities of the parties to the joint venture or partnership arrangement;
- key financial terms of the joint venture agreement; and
- governance arrangements of the joint venture.

Please note this includes Section 75 agreements for mental health trusts. See appendix B16 for details.

Commissioner	Population	% of trust's elective income	% of trust's non-elective income
PCT A	245,000	35	40
PCT B	175,000	27	30
PCT C	168,000	30	28
Others		8	2
Total		100%	100%

Example commissioner table

Section Three – Strategy

This section should describe what the organisation will look like in five years time, and provide the reader with an understanding of the trust's strategies for the lifetime of the integrated business plan and how it intends to deliver them.

For each element of the strategy, please provide rationale behind it, details of likely timeframes for realisation and an indication of how success will be measured.

The trust also needs to be able to articulate how NHS foundation trust status will make a difference.

Required Elements:

Vision – Trust vision statement

Strategy

- Rationale and the timeline of each strategic objective
- Clear understanding of how success will be measured
- Relevant details of underpinning strategies
- Major risks to achievement of strategy

Rationale for NHS foundation trust status

- Key reasons for application
- What NHS foundation trust status will mean in terms of delivering the strategy and vision of the trust, including the cultural environment that will be created within the NHS foundation trust.
- How the trust will utilise the freedoms given under NHS foundation trust status
- What use will be made of the board of governors and the trust members

Consultation process: should include details of:

- the outcome of the consultation process including the timeline;
- The type of information provided, response received to date and how this has influenced the final strategy;
- Any stakeholder analysis performed and how stakeholder relations are currently managed;
- Stakeholder analysis – summary of representation i.e. special interest groups (can be provided as an appendix to document); and
- Membership analysis – summary of representation i.e. analysis showing membership is reflective of constituencies served and actions to address under-representation.

Section Four – Market assessment

The market assessment section should cover a high-level analysis of the current health economy including details of clinical networks and other appropriate SHA-based commissioning intentions. It should incorporate information regarding the impact of Lord Darzi's Next Stage Review, and competitors (both NHS and independent sector), including patient choice statistics. Practice-based commissioning analysis can also be incorporated into this element of the business plan.

In summary, this section is about describing how the trust is 'positioned' currently within the health care market and how this, coupled with evidence-based research, will inform the future positioning of the trust within the marketplace, i.e.:

- Know your business;
- Know the business you're in; and
- Know the businesses you're in with.

This section is an assessment, not just an analysis. It needs to be backed up throughout with data, information and the implications of the data sourced, rather than being based on presumptions or aspirations.

Make good use of demographics, market share data, PEST analysis (an analysis of political, economic, social and technological factors), maps, charts, graphs and tables.

Required Elements:

Local health economy – provide details of:

- assumption on future demand growth;
- any external factors impacting upon the current levels of demand within the local health economy; and
- factors such as demographics, ageing analysis and population migration statistics which provide a useful context in which to view the local health economy plans.

Objectives of local health economy – describe how:

- the trust's strategy will contribute to the overall objectives of the local health economy; and
- the trust's activity assumptions are consistent with local health economy objectives.

PEST – provide:

- comprehensive PEST analysis.

Competitive factors: provide details of:

- patient choice statistics to date and an overview of how patient choice is factored into the overall plans for the trust. It is important to link choice into the implementation of practice-based commissioning;
- provide details of any existing and future independent sector providers, their current proximity to the trust and the services they are currently offering. Explain impact on the trust;
- detail any known issues regarding independent sector capacity; and
- impact of other NHS foundation trusts and NHS trusts in the local health economy.

Market share and segmentation:

- Relevant segmentation analysis and impact of market share, including core and non-core services.

Trust performance:

- Provide any benchmark data which is used by the trust to compare its performance with competitors, e.g. waiting times, average length of stay, capacity, readmissions rates, etc.

Section Five – Service development plans

This section of the integrated business plan is intended to cover any service development plans the trust anticipates will impact upon its “business as usual” over the next five years.

A service development plan may cover:

- a) significantly altering the level of activity undertaken by the trust (up and/or down);
- b) significantly altering the type of activity undertaken by the trust (up and/or down);
- c) significantly altering the patient pathway by modernising existing facilities, undertaking extensive refurbishment, relocating/reducing the number of sites; or
- d) significantly altering any non-clinical capability of the trust, i.e. increasing the education/training facilities, building a pharmacy manufacturing unit, providing GP services.

It should be possible to anticipate what is coming in this section. If the profile, market assessment, PEST analysis and SWOT analysis have been completed thoroughly, there should be no surprises, as the service developments will respond to the strategy and market assessment undertaken in sections three and four.

Present service developments as mini business cases, and concentrate on the most significant five or six schemes, listing them in order of short-term, medium-term, and long-term developments.

Service developments should be described in the context of the base case, ie ‘business as usual’, then go on to describe and build in the service developments to present the ‘upside’ case.

Service plans should link back to the trust's strategy, and be properly reflected within the long-term financial model.

Required Elements:

SWOT analysis: Should cover:

- the detailed SWOT analysis and how service development plans link to the outcomes of the SWOT analysis.

Summary of future initiatives: For each service development plan, provide:

- a high-level analysis of the strategic drivers behind the plan, i.e. to deliver cost improvements, to increase the level of service quality, to improve staff morale, to enhance patient choice opportunities, to fit with local health economy objectives, etc.;
- a high level cost/benefit analysis, indicating likely capital investment required, the duration of the service development plan and the likely benefits to be derived;

- quantitative benefits of the service development plan as well as the qualitative benefits; and
- details of public consultation if relevant to the success of the service development plan.

Activity projections: For each service development plan, provide:

- information on the impact upon existing activity levels;
- the type of activity likely to be affected; and
- impact on achieving healthcare targets such as the 4 hour A&E target.

Resource implications: For each service development plan:

- how capital investment required will be funded; and
- describe the impact on staff resources and actions to be taken to ensure delivery.



Section Six – Financial plans – Historical trends and I&E projections

This section tells the financial story, with focus given to the historic, present, and future performance. It describes the historical financial performance of the trust, with good narrative of the finance schedules required. It provides a clear narrative and analysis to the figures in the long-term financial model.

This section goes on to demonstrate how this track record, along with the service developments in section five, translate into robust and viable financial projections in the short, medium and long term. These projections will enable you to demonstrate that delivery of your service plans in section five will result in the organisation satisfying the key financial criteria and ratios expected of a foundation trust.

Section six should provide a clear understanding of the key assumptions behind the plans and the likely projections of the I&E, cash flow and balance sheet.

Key items for inclusion will be the assumptions behind the service development plans and the cost improvement plans.

Required Elements:

Overall summary of the section

Historical performance (including appropriate analysis to understand trends):

- Income and expenditure
- Balance sheet
- Cashflow
- Cost improvement programmes – (recurrent/non-recurrent)
- Capital expenditure
- Normalised earnings (including details of adjustments)
- Detailed bridge analysis – last historical year and current year
- Public sector payment policy performance

Current performance (ensure clear link to historical performance and to forecast, including appropriate analysis to understand trends)

Future forecasts – Assumptions – both for base case and for service developments:

- Activity
- Prices
- Income
- Costs
- Working capital

Clear demonstration of implied efficiency within income and costs

Impact of service developments (may be in section five)

- Business cases
- Investment criteria

Future forecasts (including appropriate analysis to understand trends)

- Income and expenditure
- Balance Sheet
- Cashflow
- Capital expenditures
- Normalised earnings (including details of adjustments)
- Detailed bridge analysis – year by year
- Public sector payment policy performance, including any actions to improve performance

Cost improvement programmes

- Detailed for two years
- Summary for all other years
- Governance arrangements for delivery of cost improvement programmes, including the directorate owning each cost improvement programme initiative, prior-year budget, risk assessment of achievement and details of how success will be measured
- Link to workforce changes/other enabling strategies
- Link to service-line reporting/management

Service-line reporting/management

- Status within trust
- Timetable
- Link to strategy/service developments/cost improvement programmes

Impact of future changes to tariff/contracting

Compliance with key financial criteria

- Statutory breakeven (if appropriate)
- Working capital loans and liquidity
- Private patient income cap
- Prudential borrowing code ratios

Capital funding

- Rationale – debt/internal, core unavoidable capex (maintenance) and new developments linking to initiatives discussed in strategy
- Sources of funding
- Status of securing funding

Assurance on non-recurrent income/ capital funds (public dividend capital)

Risk ratings

- Trust forecasts
- Headroom and sensitivities

Working capital facility

- Amount/rationale including debtor, creditor and stock days
- Status of securing

Key performance indicators

- Explanation in integrated business plan to understand modelled key performance indicators. For example, average length of stay, bed occupancy, theatre utilisation (acute), crisis resolution, early intervention, assertive outreach (MH)

PFI

- Costs
- Implications

IFRS

- Implications

Section Seven – Risks

This section should cover the high-level risk analysis performed by the trust, and builds on the issues identified with the PEST and SWOT analyses. It covers both financial and non-financial risks. High-level information should be provided on the existing risk management structure and systems linked to the overall risk management strategy of the trust described in section nine, and the key personnel involved in the risk management within the trust.

This section articulates how the risks in the resultant downside case are to be mitigated, to ensure good financial performance over the lifetime of the integrated business plan and beyond.

Required Elements:

Risks: Summary of:

- key risks impacting the trust's plans – assessment of likelihood;
- Mitigating actions to address the risks; and
- Details of financial and non-financial impact.

Sensitivity analysis: include:

- a table of assumptions underpinning the base case (most likely case) e.g.:
 - Volumes (e.g. inpatient, day case, outpatient, etc.)
 - Capacity (e.g. bed days available, theatre sessions available, etc.)
 - Efficiency/productivity (e.g. staff/patient ratios, throughput, etc.)
 - Tariffs
 - Unit costs (e.g. salaries by staff type, drugs costs, consumables costs)
 - Inflation (e.g. tariff uplifts, wage inflation, drug costs inflation, etc.)
 - Balance sheet (e.g. accounting policies, creditor days, debtor days, etc)
- a scenario analysis which describes the upside and downside for each of these assumptions. The sensitivity analysis should assess the financial impact in income & expenditure and cash terms of the upside and downside scenarios against the base case;
- the impact of controllable mitigating items in the downside case scenario; and
- conclusion on financial position after a reasonable set of downside risks (after mitigation).

Section Eight – Leadership and workforce – Management arrangements

This section is intended to cover an overview of the leadership and the management structure of the trust and its employees. It should provide the reader with a high-level understanding of how the trust board operates and its attitude towards its workforce.

In particular, this section should cover the leadership of the organisation and how it needs to develop to be fit for purpose, how the workforce strategy will underpin organisational change and development and how the trust will continue to engage with and involve its staff in the development of future service plans and HR arrangements.

This section should demonstrate the links to the financial reports within the integrated business plan and the long-term financial model, including the implications of any changes to staffing policies e.g. use of agency staff, or staffing plans e.g. whole-time equivalents, grades, structures etc.

Required Elements:**Management arrangements. Provide:**

- an overview of the board structure; and
- the executive and non-executive director qualifications and experience, including a scanned photo within the document for each executive and non-executive director.

Workforce key performance indicators – include details of:

- staff numbers;
- turnover;
- sickness; and
- absence.

Benchmarking data may be added.

Agency arrangements and recruitment hot-spots

- Provide an overview of how these issues impact the trust.

Workforce and organisational development:

- Overview of agenda for change, the European working time directive, the consultant contract (level of sign-up).
- Evidence of how staff engagement and involvement has been achieved and will continue to be effectively developed going forward.

Leadership & Workforce – HR strategy

Required Elements:

HR strategy – integrated business plan should cover:

- how HR issues are integrated across the organisation’s strategies;
- HR’s contribution from board level through the organisation, including consideration of the future impact of wider system reforms on staff (such as choice, agenda for change) and the opportunity NHS foundation trust status brings for the workforce;
- what opportunity will be created for the workforce as a result of securing NHS foundation trust status;
- growing as an employer: how is the organisation maintaining and continuing to develop excellent HR practices, drawing from the NHS and beyond; demonstrating that the organisation will continue to meet legal requirements in HR and HR-related issues and demonstrating local HR capacity/capability to fulfil this, and how this will be done through a duty of partnership;
- staff involvement and/or social partnership – how has the organisation developed its HR ‘strategy’, by involving and engaging staff (and other partners/stakeholders) and where has this involvement informed and influenced the business plan, e.g. use of volunteers to assist in service delivery. How has the organisation responded to the feedback it has received from these parties to improve or change service provision; and

- illustrations within the integrated business plan (including highlighting and cross-referencing to the links to the governance arrangements), how the organisation's ongoing aspirations and plans to grow and develop further staff involvement, engagement and wider social partnership will be achieved.

Section Nine – Governance arrangements

This section of the integrated business plan is intended to cover how the applicant trust currently ensures it is sufficiently well governed.

Special attention should be paid to the future governance arrangements of the trust and how the members and the board of governors will impact upon the governance arrangements of the trust.

Corporate governance can be defined as the process whereby organisations make strategic decisions, determine who is involved and ensure accountability is maintained. This will encompass formal mechanisms such as the risk management strategy of the trust, and informal means. Trusts will also need to describe where and how they need to strengthen existing systems and processes to enable effective operation as an NHS foundation trust.

Applicants need to make specific reference to the findings of the historical due diligence, detailing progress against any action plans identified.

Required Elements:

Stakeholder interests

- Summary of constituencies and board structure
- Description of governors and constituencies and rationale, which complies with legislation
- How the governors will be supported and inducted into the organisation and governor role, including the provision of tailored support where appropriate
- How the membership will be utilised and exploited within the NHS foundation trust for the development of future service delivery
- How the organisation will enable empowerment within a framework of accountability and managed risk.

Corporate governance and management

- Overview of the committee structure employed by the trust, for example the audit committee and the risk management committee. Details should include the key members of each committee, terms of reference, how frequently they meet and the sources of information provided to the committee on a regular basis
- Refer to the *NHS Foundation Trust Code of Governance* for further guidance on this area

Risk management

- Should provide a summary of how risks are managed throughout the organisation
- Comment on NHS Litigation Authority Risk Management Standards achievement

Performance management reporting framework: include details of:

- which reports are sent to the board on a monthly/quarterly basis;
- changes made to reporting procedures in light of NHS foundation trust application;
- systems currently used by the trust to track financial and non-financial performance, e.g. healthcare targets, clinical risk; and
- when the systems were introduced, if benchmarking data is available, when information can be obtained/frequency of the reports and the access available to these systems throughout the organisation.

Financial controls and reporting: describe the financial controls and reporting procedures at the trust covering:

- details of finance committee;
- controls over expenditure; and
- details of any significant controls weaknesses in Statement of Internal Control

Audit: description of the audit arrangements covering:

- internal audit – mention any adverse internal audit reports;
- external audit – name of auditor, form of audit opinion for last two years, significant issues raised in management letter to the trust; and
- details of the audit committee.

Compliance Framework: Overview providing details of:

- how the trust will ensure compliance with the monitoring regime; and
- the financial risk rating at authorisation and year 1 of the projected period.

IT systems: Overview of systems including:

- readiness for national initiatives such as choose and book, electronic staff records, Connecting for Health, etc.

Appendix A4: Governance rationale template

The table provided below sets out the requirements for the governance arrangements paper which forms a key part of the governance application material to be submitted to

the Secretary of State. **Governance arrangements must be based on what is suitable for the applicant's organisation.** Temptations to plagiarise arrangements from other NHS foundation trusts should be resisted, since many lead to arrangements that do not work for other organisations. In line with legislation, applicants **must** describe:

Issue	Details	Rationale
Membership		
Public membership		
Definition of the public constituency(ies).		
How membership will reflect the full diversity of the potential community and be representative of the community served by the trust.		
Plans to develop, maintain and grow the membership.		
Any exclusions to membership that are to apply over and above the legal minimum.		
Expected minimum number of members in the public constituency.		
Patient membership		
Will there be a patient or service user constituency?		
If there is a patient or service user constituency, will it include carers?		
If there is a patient or service user constituency, what are your plans for sub-division of the constituency?		
If there is a patient or service user constituency, what are your plans to develop, maintain and grow the membership, what are the timescales and milestones for growth?		
If there is a patient or service user constituency, are there any exclusions to membership that are to apply over any above the legal minimum?		

Issue	Details	Rationale
Membership		
Patient membership		
If there is a patient or service user constituency, which is the expected minimum number of members in the public constituency?		
Are there any plans to recruit patient or service user members on an opt-out basis?		
If you plan to use an opt-out system how will you communicate with patients and service users to ensure they are adequately informed?		
Staff constituency		
Definition of the staff constituency.		
Plans for sub-division of the constituency.		
Plans to develop, maintain and grow the membership. What are the timescales and milestones for growth? How membership will reflect the diversity of local staff.		
Expected minimum number of members in the staff constituency.		
Are there any plans to recruit staff members on an opt-out basis? How will you communicate with staff to ensure they are adequately informed?		
Disqualification for membership		
Any exclusions that are to be applied for disqualification of membership.		
Termination of membership		
Under what circumstances will you terminate membership, and how will you enforce it?		
Board of governors		
The size, composition of the board of governors.		
How will you ensure the size of the board of governors is manageable?		
What part do you want the board of governors to play in the NHS foundation trust and how will you empower them?		

Issue	Details	Rationale
Board of governors		
Public governors		
The process to be followed for nominating public governors and details of the election process.		
Circumstances in which people are not eligible to be governors over and above the mandatory circumstances.		
Patient governors (if applicable)		
The process to be followed for nominating patient governors and details of the election process. The explanation needs to include the specific circumstances in which people are not eligible to be governors over and above the mandatory circumstances.		
Staff governors		
The process to be followed for nominating staff governors and details of the election process.		
Circumstances in which staff are not eligible to be governors over the mandatory circumstances.		
Primary care trust governors		
Primary care trust(s) that are eligible to appoint governor(s) are selected and details of the appointment process.		
Local authority governors		
Local authority(ies) that are eligible to appoint governor(s) are selected and details of the appointment process.		
University governors		
Where applicable, the university(ies) that are eligible to appoint governor(s) are selected and details of the appointment process.		
Partnership governors		
Why those organisations were selected and the process for appointing them (e.g. colleges, voluntary organisations, etc.).		

Issue	Details	Rationale
Board of governors		
Partnership governors		
Are you considering representatives of any organisation who will be allowed to attend board meetings in an official capacity (e.g. chair of neighbouring trust) but who will have no voting rights?		
Terms of office		
Any cap on the total time served for each category of governor (whether elected or appointed) and for non-elected governors the term of office before new or re-appointment.		
Disqualification		
The provisions for the removal of governors that are intended to apply and any other additional reasons for exclusion.		
Termination as a governor		
What conditions or requirements apply including the requirements of Schedule 7, paragraphs 8 (1) and (2) of the NHS Act 2006.		
Vacancies		
The process for handling vacancies in the board of governors.		
Roles and responsibilities of governors		
The process to appoint or remove the chair and other non-executive directors This may not apply for the initial chief executive and non-executives.		
The process to approve the appointment of the chief executive (may not apply for the initial chief executive).		
The process to decide the remuneration and allowances of non-executive directors.		
Details of the relationship between the board of directors and the board of governors.		

Issue	Details	Rationale
Board of governors		
Roles and responsibilities of governors		
Any other provisions about the board of governors. This should outline details of how the board of governors intends to maintain a dialogue with the staff and public membership.		
Details on payment of travel and other expenses (but not remuneration) for governors.		
Meetings		
Who will deputise in the chair's absence at the board of governors.		
Any special reasons as to why meetings of the board of governors would not, on an exceptional basis, be open to the public.		
The frequency of meetings of the board of governors.		
The number of governors by type that must be present at any meeting of the board of governors.		
The wording of the declaration for governors to give the particulars of their qualification to vote as a member of the board of governors and for members to vote or to stand for election as a governor.		
Conflicts of interests of governors		
Details of how conflicts of interest should be handled.		
Committees and sub-committees		
Any other provisions about committees that may be set up to advise the board of governors.		
Board of directors		
The overall size and constitution of the board of directors including the numbers and roles of non-executive and executive directors.		
The eligibility criteria for non-executive director posts.		

Issue	Details	Rationale
Board of directors		
Terms of office		
Terms of office for the chair and non-executive directors.		
Terms and conditions of the chief executive and executive directors.		
Disqualification		
Any exclusions to the board of directors over and above the legal minimum.		
Roles and responsibilities		
The process for a committee of non-executive directors to monitor, review and carry out other audit committee functions. Proposals for the audit committee's function are also required.		
The process for the non-executive directors to appoint or remove the chief executive and for the committee of chief executive, chair and non-executive directors to appoint or remove other executive directors.		
The process for a committee of non-executive directors to decide remuneration and allowances for executive directors and (if relevant) the provisions on remuneration and allowances that might be set out in the constitution, pending appointment of such a committee.		
The process for the directors to have regard to the views of the board of governors on the trust's forward planning.		
The process for the board of directors to present to the board of governors at a general meeting the annual accounts, any report of the auditor on them, and the annual report.		
Meetings of the board of directors		
Details of how meetings should take place including when meetings should take place in public or private.		

Issue	Details	Rationale
Board of directors		
Conflicts of interests of directors		
Details of how conflicts of interest should be handled.		
Registers		
How the register of members will be maintained including admission to and removal from the register.		
How the register of members of the board of governors will be maintained including admission to and removal from the register.		
How the register of members of the board of governors' interests will be maintained including admission to and removal from the register.		
How the register of members of the board of directors' interests will be maintained including admission to and removal from the register.		
Public documents		
How the trust will make provision for the public to receive the documents set out in the 2006 Act and the charges that will apply (regulations may prescribe circumstances in which there is not to be public access to the register).		
Auditor		
Details of the auditor's appointment and roles and responsibilities.		
Accounts		
Details of process to make the accounts available.		

Issue	Details	Rationale
Annual reports and forward plans		
Details of process to make the annual report and forward plans available.		
Indemnity		
Details of any indemnity clause.		
Dispute resolution procedures		
Detail of any dispute resolution procedures in the constitution. E.g. issues related to the constitution or other disputes such as contract.		
Amending the constitution		
Details of the procedure for amending the constitution.		

Appendix A5: Model core constitution

The applicant is required to submit its proposed constitution based on the Model Core Constitution, with any additions thereto shown as tracked changes.

www.monitor-nhsft.gov.uk/publications.php?id=1165

Appendix A6: Public consultation response and evidence of staff engagement and involvement template

This document is intended for applicant NHS foundation trusts to outline the information which may be used to inform recommendations to the Secretary of State but which will be required to satisfy Monitor that:

- robust public consultation has been undertaken and a representative membership base has been developed;

- staff and stakeholder involvement in the development of the integrated business plan has been actively sought and impacted; and
- the organisation can demonstrate a continued commitment to expand and progress the wider culture change and social responsibility required to operate as an NHS foundation trust.

It is therefore in the interest of all applicants to provide as much information as possible to demonstrate this.

Background	
1. Name of Applicant	
2. Area served by trust	
3. Contact details of person responsible for the public consultation	

About the public consultation

4. Dates of public consultation	Started	Finished

5. Which media were used for the public consultation document?	Full consultation document in hardcopy	Yes	No
	Summary consultation document in hardcopy	Yes	No
	Web-based consultation document	Yes	No
	Talking book/ audio tape/CD-ROM	Yes	No
	Large print versions	Yes	No
	Versions in ethnic languages (please specify which)	Yes	No
	Presentation at public meetings (please specify where meetings were held and the number attending each)		
	Other (please specify)		

6. Number of formal responses received		No.
	Hardcopy, using proforma provided as part of the consultation exercise	
	Others in hardcopy – letters, etc	
	On website	
	By email	
	By telephone	
	By fax	
	By text	
	Verbally at public meetings	
	Others – please specify	

7. Was the pattern of responses to the public consultation in line with the demography and geography of the area? Were there any areas or groups that were not adequately represented in the responses received? Please provide explanations where necessary, and details of trust action plans to target under-represented areas.

Trust response

11. Does the trust have any comments about the general tone of responses received? For example, were those opposing the proposals expressing fundamental objections or picking up minor (possibly technical) issues?

12. What were the main topics that attracted critical comment and what was the trust’s response?

Issue (please include in brackets the name of the main person(s)/ bodies raising it)	Trust’s response

13. What were the main areas attracting support locally? (please indicate in brackets the main source(s) of this support, e.g. patients, staff, general public)

14. Specifically, what was the general tenor of responses with regard to:	
Membership	
Board of Governors	
Board of Directors	
Elections	
Constituencies	
Boundaries	
Constitution	
Age limits	
Youth representation	
Staff representation	
Vision	
Transitional arrangements	
HR Strategy	
Communications	
Any novel suggestions received as result of consultation	
Other issues – please specify	

15. Is there anything else about the public consultation exercise and outcome that you would like to let the Secretary of State or regulator know?

16. Please provide the contact details for the person who will be available to answer detailed queries on the public consultation and provide copies of any responses required for further scrutiny?

Name:

Address:

Telephone number:

Email:

Staff engagement, involvement and wider culture change

17. How have staff been given ample opportunity to play an active part in the dialogue and deliberations around the NHS foundation trust application? Where have staff dialogue and views influenced the broad HR 'strategy', which in turn supports the service development plans and organisational goals for the trust?

18. How did (and for the future 'how will') the organisation ensure effective staff involvement and participation in shaping cultural change and service development and delivery, and in embracing social partnership in its broadest sense?

19. How has the organisation engaged with (and how will it continue to engage with) clinicians in determining the future direction of service provision, and how have the outcomes of such discussions been analysed from a cost/benefit perspective and integrated into the service development plans outlined in the business plan?

20. How is the trust developing/managing new (and existing) relationships with local health organisations and other local networks, social care, good citizenship and social responsibility, and playing a role in the wider community?

21. What is the degree of 'integration' of first-rate HR practice in all the main functions of the organisation (operational, strategic and clinical) – with a view to demonstrating that good HR practice and thinking is present in the wider organisation and not only in the specialist HR function itself.

22. How has the organisation demonstrated its commitment to unlocking the potential of all staff and enabling all staff to progress their skills and careers through lifelong learning and development?

Appendix A7: Membership strategy template

The format of this document is intended to guide applicant NHS foundation trusts in describing the trust's strategy to set up systems and processes essential to establish, maintain and develop an active membership.

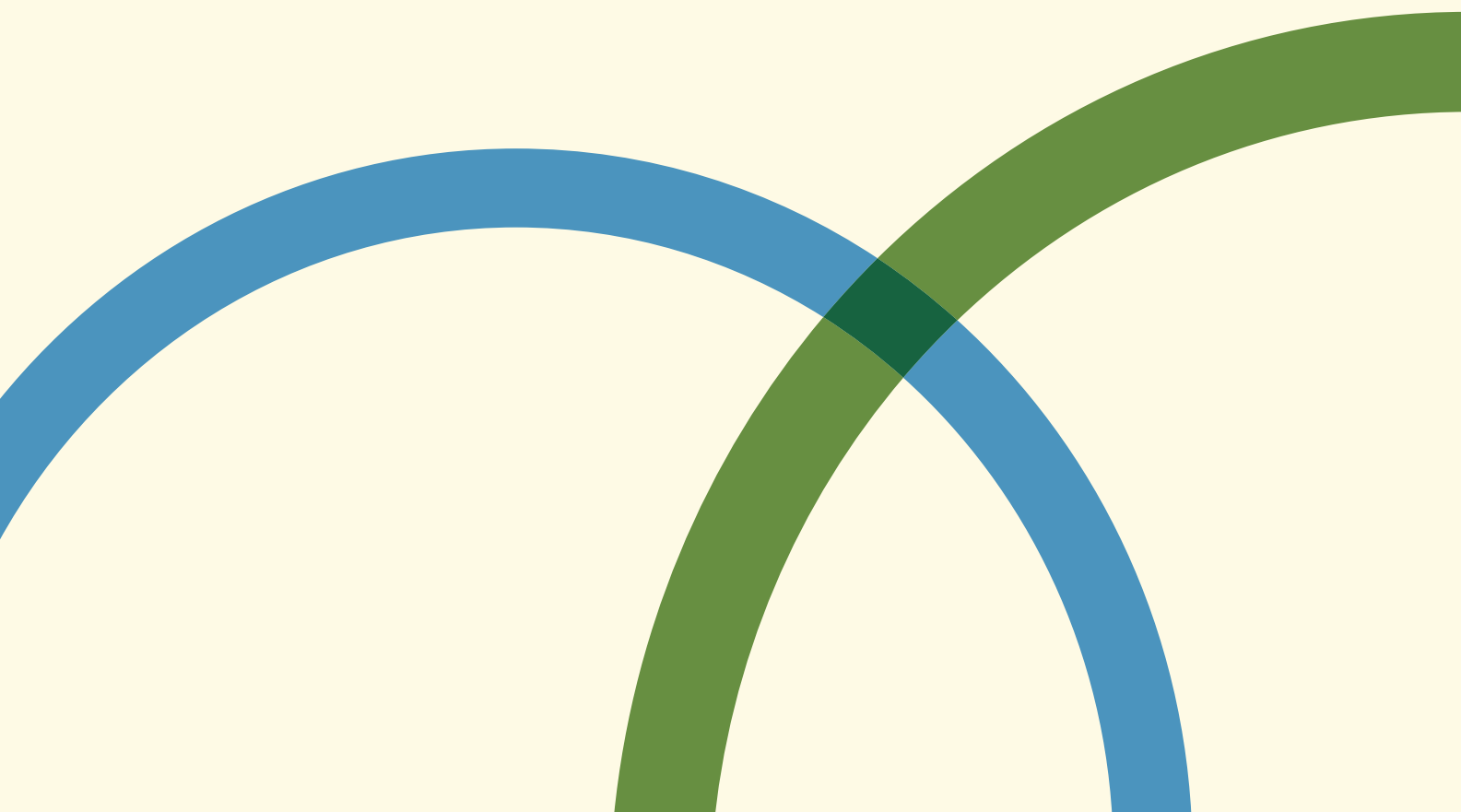
The strategy will define the membership community, and sets out a series of actions to help the organisation achieve its objectives. It will also outline how the trust will evaluate its success in delivering this strategy and learn from this process to continue to develop and exploit an active and participative membership.

1	<p>What is membership?</p> <p>What are the objectives for the organisation in respect of its membership, for example: Qualification for membership, accessibility, publicity, composition of membership, rights and responsibilities of membership, using members as a valuable resource, maintaining accurate and informative database of members</p>
2	<p>Defining the membership community</p> <p>Based on geography of population (communities included), size of population area, size of population base, profile of population base, demographic changes to population base over next five years, employment statistics, ethnicity statistics, constituencies identified within membership, staff membership</p>
3	<p>Resourcing the membership development</p> <p>How will the trust resource the development of the membership, e.g. pay costs, non-pay costs, named individuals within the trust with responsibility for taking membership development forward</p>
4	<p>Building the membership base</p> <p>How will the trust deliver the objectives identified within section 1? What actions need to be taken (in priority order), by whom, and by when? For example:</p> <ul style="list-style-type: none"> • What actions does the management team need to undertake? • What actions will the board of governors complete within the first 12 months of operation as an NHS foundation trust? • What actions will the board of governors begin to undertake within the first 18 months of operation as an NHS foundation trust?
5	<p>Managing active membership</p> <p>How will the trust continue to develop and maintain a representative and active membership base? What actions need to be taken (in priority order), by whom, and by when? For example:</p> <ul style="list-style-type: none"> • What actions does the management team need to undertake? • What actions will the board of governors complete within the first 12 months of operation as an NHS foundation trust? • What actions will the board of governors begin to undertake within the first 18 months of operation as an NHS foundation trust?

6	<p>Communicating with members</p> <p>How will the organisation assist members, elected representatives, managers, and employees so they can contribute effectively to the development of the NHS foundation trust?</p> <ul style="list-style-type: none"> • What actions does the management team need to undertake? • What actions will the board of governors complete within the first 12 months of operation as an NHS foundation trust? • What actions will the board of governors begin to undertake within the first 18 months of operation as an NHS foundation trust?
7	<p>Playing a key community role</p> <p>How will the organisation establish itself as a trusted and accessible participant in the life of the community, to:</p> <ul style="list-style-type: none"> • ensure that the NHS foundation trust positively contributes to local initiatives and partnership working that develop social inclusion; • play a major role in the development and well-being of the community served by the NHS foundation trust; and • maximise opportunities for membership and other relationships amongst those who live in the communities served by the NHS foundation trust. <ul style="list-style-type: none"> – What actions does the management team need to undertake? – What actions will the board of governors complete within the first 12 months of operation as an NHS foundation trust? – What actions will the board of governors begin to undertake within the first 18 months of operation as an NHS foundation trust?
8	<p>Working with other membership organisations</p> <p>How will the organisation develop a strong sense of shared purpose with other like-minded organisations, for example:</p> <ul style="list-style-type: none"> • Working with other NHS foundation trusts and mutuals to raise the profile of community activity • Share best practice with such partners on membership, co-operation and community relations <ul style="list-style-type: none"> – What actions does the management team need to undertake? – What actions will the board of governors complete within the first 12 months of operation as an NHS foundation trust? – What actions will the board of governors begin to undertake within the first 18 months of operation as an NHS foundation trust?
9	<p>Evaluating success</p> <p>How will the membership strategy, although generated by the trust, become the property of the membership, operated on their behalf by their elected and nominated representatives?</p> <p>How will the board of governors carry out its key role of monitoring the effectiveness of the strategy and ensuring it remains meaningful and relevant as the membership grows and matures?</p> <ul style="list-style-type: none"> • What actions does the management team need to undertake? • What actions will the board of governors complete within the first 12 months of operation as an NHS foundation trust? • What actions will the board of governors begin to undertake within the first 18 months of operation as an NHS foundation trust?

10	Membership recruitment to date How has the potential membership been targeted to date, and how many members have resulted?
11	Plans for future membership recruitment <ul style="list-style-type: none">• What actions does the management team need to undertake?• What actions will the board of governors complete within the first 12 months of operation as an NHS foundation trust?• What actions will the board of governors begin to undertake within the first 18 months of operation as an NHS foundation trust?

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PART B

Monitor Appendices

Appendix B1: Overview of submissions – Monitor phase

SHA-led Trust Development Phase	Submissions
	<ul style="list-style-type: none"> • Regular updates of applicant trajectories, via the SHA, at agreed intervals between SHA and Department of Health Foundation Trust Unit.
Secretary of State Support Phase	Submissions
	<ul style="list-style-type: none"> • Final integrated business plan – after the minimum 12 week public consultation period. To include the following attachments: <ul style="list-style-type: none"> – Appendix 1 – Fully completed long-term financial model – Appendix 2 – Governance rationale – Appendix 3 – Model Core Constitution – Appendix 4 – Consultation response and staff engagement – Appendix 5 – Membership strategy • SHA application support form, covering the Seven Domains • SHA application front cover, red/amber/green rated • SHA board or SHA chair and chief Executive letter confirming SHA support for application
Monitor Assessment Phase	Submissions
Legally constituted	<ul style="list-style-type: none"> • Constitution including election rules (appendix 3 to integrated business plan) • Summary of statutory consultation process (appendix 4 to integrated business plan) • Membership strategy (appendix 5 to integrated business plan) • Update on implementation of membership strategy • Details of electoral process and report on initial elections
Financially viable	<ul style="list-style-type: none"> • Final integrated business plan as defined above (including any additions) • Financial model incorporating long-term financial projections and working capital projections (i.e. 5 year annual projections and two year monthly working capital projections) • Working capital board statement and board memorandum • Schedule of services
Well governed	<ul style="list-style-type: none"> • Business plan as above • Governance arrangements and rationale (appendix 2 to integrated business plan) • Membership strategy (appendix 5 to integrated business plan) • Update on implementation of membership strategy • Details of electoral process and report on initial elections • Register of directors' interests • Register of governors' interests • Third party inspectorate reports • Self-certification statements (appendix B12) and supporting evidence • Direct evidence on <ul style="list-style-type: none"> – Performance management – Risk management – Targets and standards

Appendix B2: Assessment questions with submission – integrated business plan

Assessment question		Submission
1. Does the integrated business plan provide a level of activity and mix of services consistent with patient or service user needs and the requirements of the 2006 Act?	(i) Does the plan include the required services?	<ul style="list-style-type: none"> • Schedule of mandatory services (including any mandatory education and training)
	(ii) Does the plan make acceptable assumptions about property and asset disposals?	<ul style="list-style-type: none"> • Integrated business plan
	(iii) Are the private patient income assumptions consistent with the cap?	<ul style="list-style-type: none"> • Integrated business plan • Details of private patient income assumptions
	(iv) Is the strategy supported by key commissioners?	<ul style="list-style-type: none"> • Integrated business plan
	(v) Does the plan fit with local and national service needs?	<ul style="list-style-type: none"> • Integrated business plan
2. Is the integrated business plan internally consistent?	(i) Are the resources (people, costs and facilities) consistent with the projected service activity and funding?	<ul style="list-style-type: none"> • Integrated business plan • Working capital review • Financial projections
	(ii) Are the capital assumptions consistent with the projected service activity?	<ul style="list-style-type: none"> • Working capital review • Financial projections
	(iii) Is the implementation plan clear and consistent (e.g. recruitment, borrowing)?	<ul style="list-style-type: none"> • Integrated business plan
3. Is the business plan financially viable and sustainable?	(i) What are the major changes proposed in the integrated business plan?	<ul style="list-style-type: none"> • Integrated business plan
	(ii) Are the key assumptions realistic (e.g. the impact of payment by results, patient choice and agenda for change)?	<ul style="list-style-type: none"> • Integrated business plan • Long-term financial projections
	(iii) Is there a realistic set of risk scenarios with a clear set of contingency plans?	<ul style="list-style-type: none"> • Integrated business plan • Financial projections • Working capital review

Appendix B2: Assessment questions with submission – governance

Assessment question		Submission
1. Do the proposals provide a representative and comprehensive governance strategy?	(i) Have you taken steps to secure representative membership?	<ul style="list-style-type: none"> • Membership strategy • Update on progress made in implementation of membership strategy
	(ii) Will the board of governors reflect the composition of the membership; are the affiliations and financial interests of the governors known?	<ul style="list-style-type: none"> • Constitution, including election rules • Governance arrangements and rationale • Electoral rules and regulations • Account of current electoral process • Subsequent update on elections • Register of governors' interests
	(iii) Are the affiliations and financial interests of the board known?	<ul style="list-style-type: none"> • Register of directors' interests
	(iv) Are there clear structures and comprehensive procedures for the effective working of NHS foundation trust boards?	<ul style="list-style-type: none"> • Constitution • Governance arrangements and rationale
2. Do the proposals meet the statutory requirements laid out in the 2006 Act?	(i) Is the proposed constitution in accordance with Schedule 7 to the 2006 Act?	<ul style="list-style-type: none"> • Constitution
	(ii) Is the proposed constitution otherwise appropriate?	<ul style="list-style-type: none"> • Constitution
	(iii) Has the statutory consultation been held?	<ul style="list-style-type: none"> • Summary of statutory consultation (including issues raised and applicant's response)
	(iv) Have the elections been conducted in accordance with the election rules annexed to the constitution?	<ul style="list-style-type: none"> • Electoral process and results

Assessment question		Submission
<p>3. Does the trust board believe that the trust has the organisational capacity necessary to deliver the integrated business plan?</p>	<p>(v) Is the trust board confident that the management team has the capability and experience necessary to deliver the strategy?</p> <p>(vi) Is a selection process in place to ensure that non-executive directors have the appropriate experience and skills?</p> <p>(vii) Are the necessary management structures in place to deliver the strategy?</p> <p>(viii) Are the necessary management processes in place to deliver the strategy?</p>	<ul style="list-style-type: none"> • Self-certification on management capability and experience • Self-certification on process • Self-certification on management structures • Self-certification on planning • Direct evidence on performance management • Direct evidence on risk management • Healthcare commission reports • Service development strategy • Direct evidence of governance arrangements for joint ventures and partnerships
<p>4. How is the applicant performing against existing targets and national core standards?</p>	<p>(ix) How is the board assured that it has action plans in place to meet existing targets and national core standards?</p>	<ul style="list-style-type: none"> • Self-certification on targets and standards • Copy of applicant's self assessment on healthcare targets and standards • Historical track record of target achievement together with expected trajectory. Action plans to address underperformance

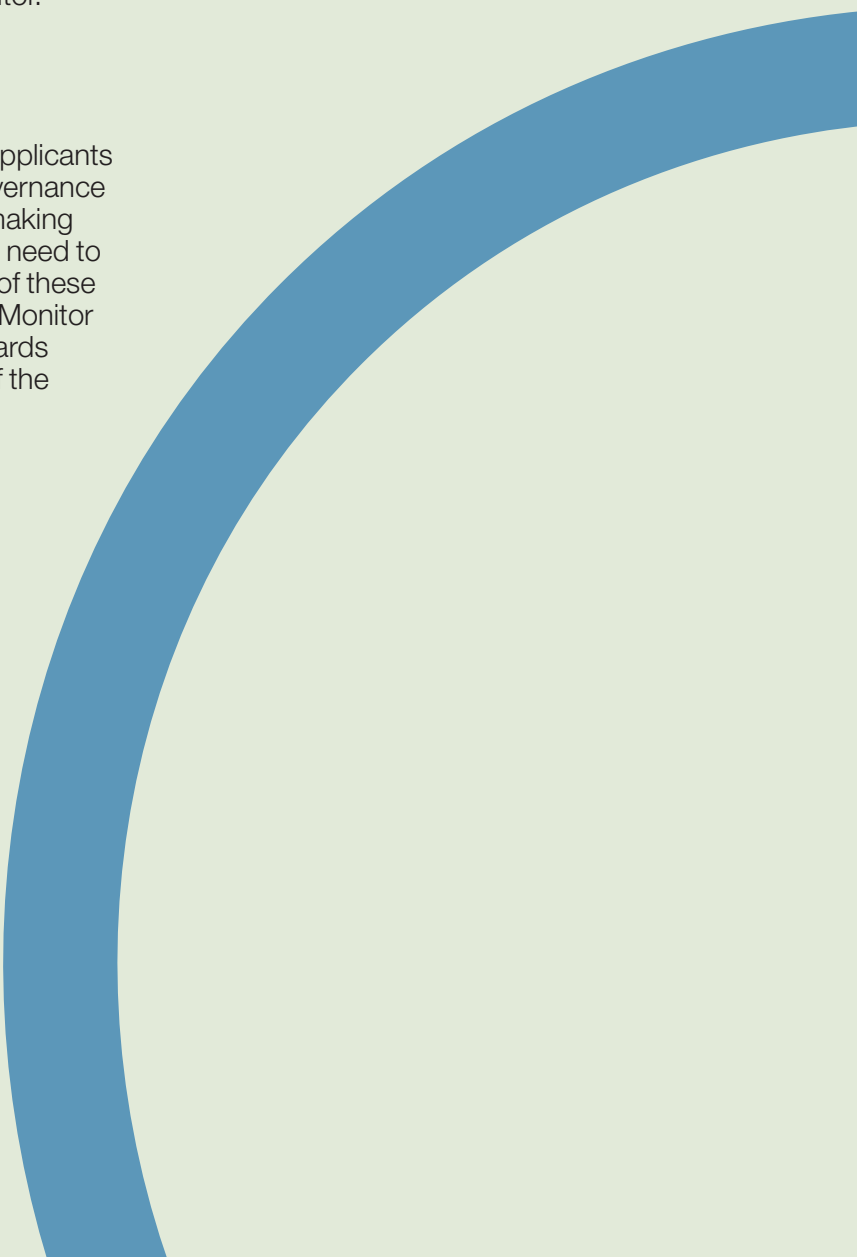
Appendix B3: Work that trusts are expected to conduct concurrent with this application to Monitor

- **Contracting with primary care trusts and other commissioners**

When necessary, applicants should continue in their contracting with primary care trusts and other commissioners at the same time as conducting their application to Monitor.

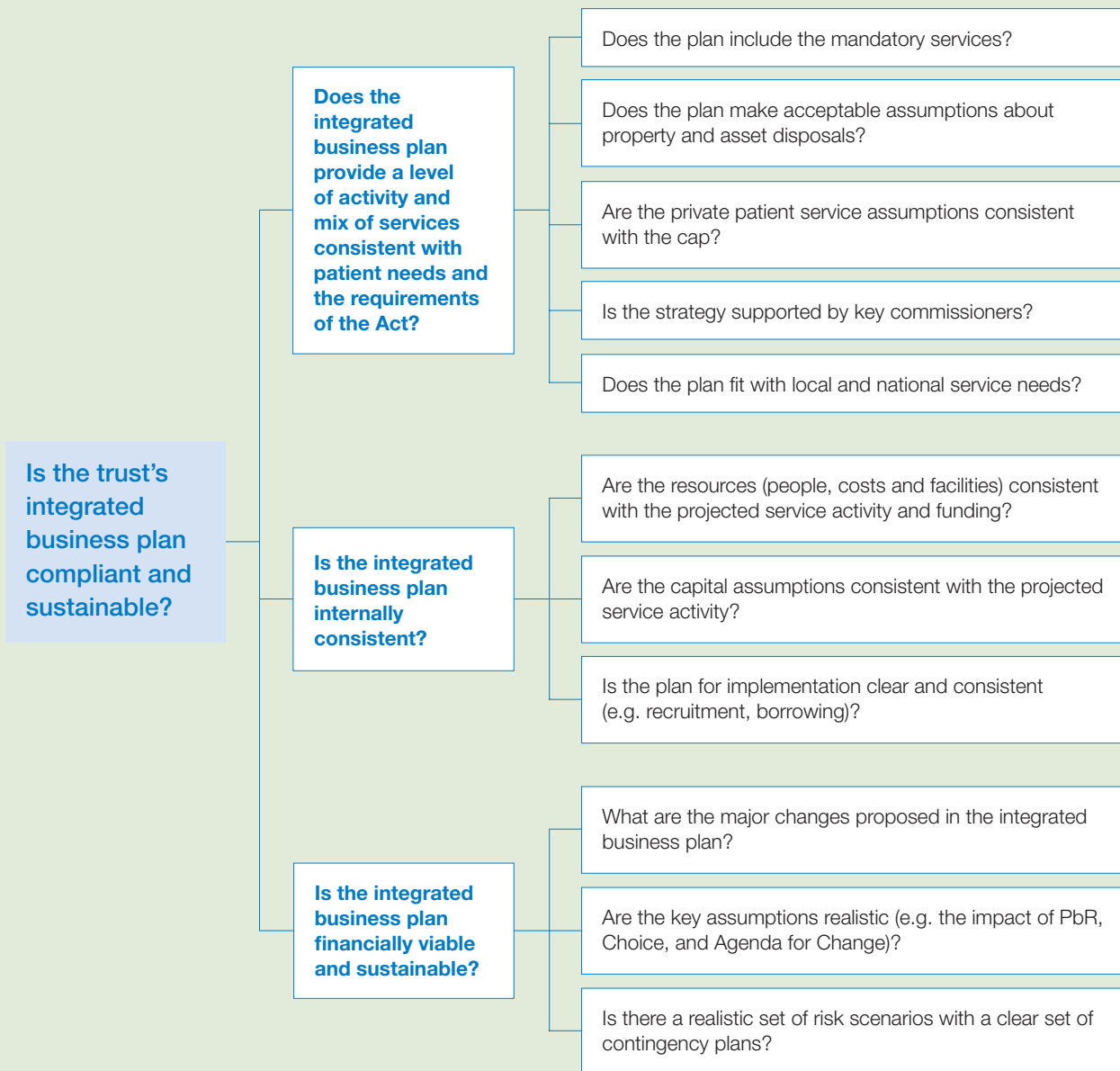
- **Implementation of governance arrangements**

On making an application to Monitor, applicants are able to start implementing their governance arrangements, holding elections and making appointments to the board. Applicants need to submit a timetable for implementation of these governance arrangements to Monitor. Monitor will require an update on progress towards implementation and on the outcome of the election process.



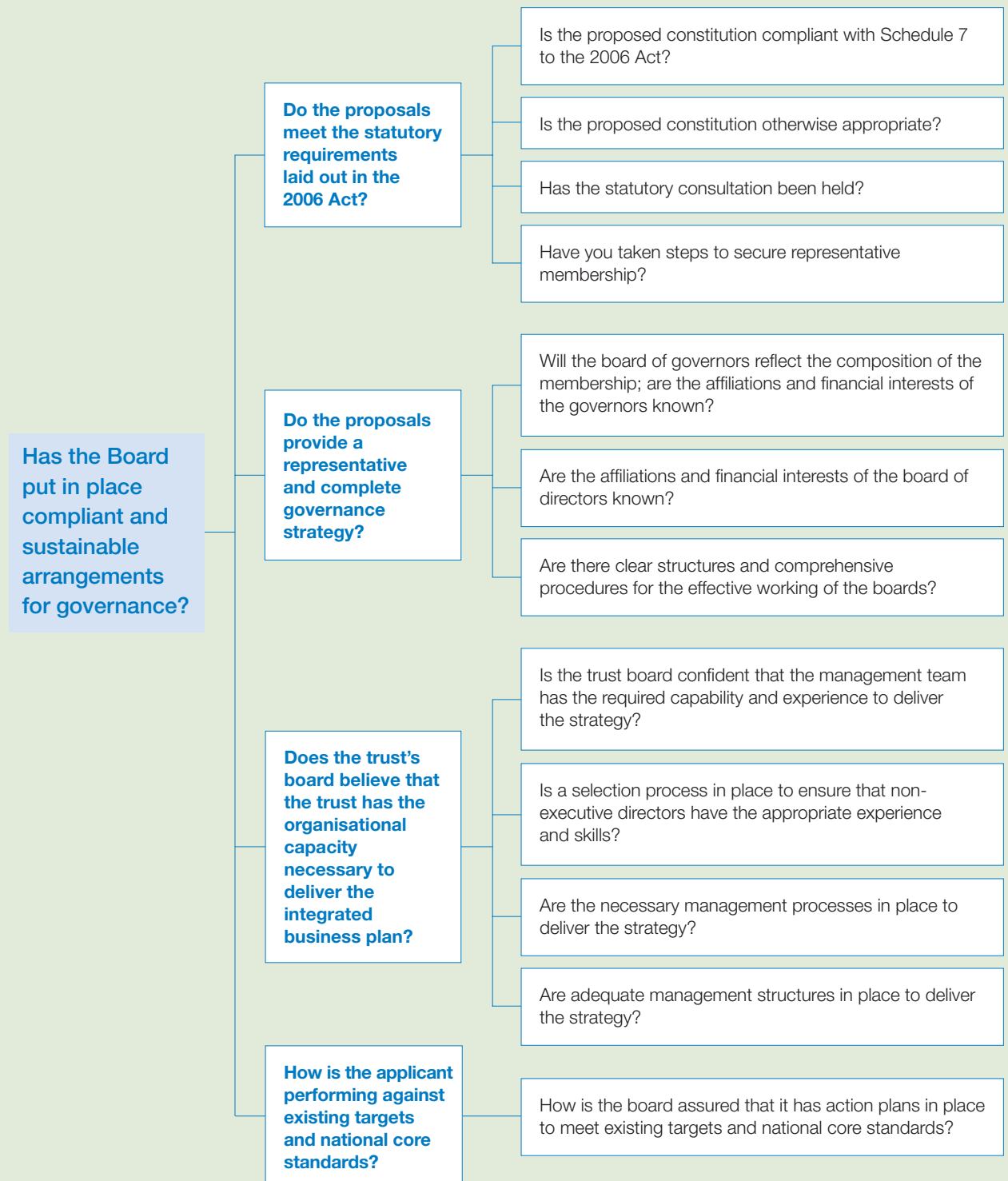
Appendix B4: Business plan issue analysis

These are the questions from the ‘Questions Monitor will ask in assessment’ sections of this Guide (including any mandatory education and training) laid out as a single issue analysis



Appendix B4: Governance issue analysis

These are the questions from the ‘Questions Monitor will ask in assessment’ sections of this Guide (including any mandatory education and training) laid out as a single issue analysis



Appendix B5: Definition of private patient income

Definition	Private patient income
	Total patient related income

Private patient income is defined as non-NHS private patient income. Patient-related income includes the following:

- Income received from primary care trusts and specialist commissioners for contracted patient care services
- Income received from other NHS trusts for contracted patient care services
- Income received from the Department of Health for patient care services
- Non-NHS private patient income
- Other income for patient care services (including Road Traffic Act income, Ministry of Defence, local authorities, prisons etc.)
- Any amounts received from SHAs for patient care services, including income for overseas patients treated under reciprocal and non reciprocal agreements
- Should exclude income for asset impairments (non patient related)

Appendix B6(a): Schedule of services – mandatory health services

General

- Applicants must specify for each service type the activity volume for which contracts have been signed (or there is an intention to sign contracts) with each commissioner. The mandatory services are the aggregate of each service by activity type.
- Applicants are provided with a separate workbook for mandatory health services, broken into different worksheets. There are different workbooks for acute and mental health trusts.

Acute trusts

- For acute trusts, one worksheet should be completed for each material commissioner and material location (e.g. if a trust has two commissioners and one location, it should complete two worksheets – one per commissioner).
- Individual worksheets should be completed for each material commissioner. Material commissioners are defined as those expected to account for 5% or more of current year income. All other commissioners should be aggregated together in a single worksheet.
- Where location of service delivery is a material issue and specified, or expected to be specified, in the contract between the applicant and commissioners, the applicant must specify the volume of that specialty/ activity by location.
- On each worksheet activity volumes are entered for each service by type (e.g. day case, emergency in-patient). Blank columns have been provided for other types of activity. Services have been listed by specialty code.

Mental health trusts

- For mental health trusts, one worksheet should be completed for each commissioner and care group (e.g. if a trust has two commissioners and two care groups, it should complete four worksheets – two per commissioner).
- Individual worksheets should be completed for each material commissioner. Material commissioners are defined as those expected to account for 5% or more of current year income. All other commissioners should be aggregated together in a single worksheet.
- On each worksheet activity volumes are entered for each sub-care group.

Appendix B6(b): Schedule of services – mandatory health services: commissioner support

This attachment is intended to provide a summary of the income it is anticipated will be received in consequence of the contractual commitments entered into, or expected to be entered into, between the trust and commissioners. Historical information is also required in respect of significant income received from one or more commissioners in the previous year which will not be received in the current year.

- The applicant must list all key commissioners. These are defined as commissioners expected to account for 5% or more of the current year's income. For applicants to be authorised at 1 April this information will be for the following financial year rather than the recently completed financial year. i.e. 1 April 2006 authorisations will be required to complete the schedule for the year 2006/7; it may then group the others in the "Other commissioners" row.

- For each commissioner the applicant must list total income for which contracts have been signed (or are understood to be going to be signed) in the current financial year (i.e. income from mandatory services); for "Other commissioners" the aggregate amount for that group should be shown;
- For each commissioner the applicant must also provide the following historical information: the amount of income in the prior year attributable to that commissioner; for "Other commissioners" the aggregate amount for that group should be shown.
- This workbook also covers income/support received from local authorities in consequence of Section 75 agreements (with income/support identified separately in respect of each local authority) and also income received from commissioners to fund any secondary commissioning undertaken by the trust.

NB: "the provision of goods and services for purposes related to the provision of health care" includes the provision of social care services in terms of any Section 75 agreements. These could include for example, after care services following discharge from hospital and learning disability services.

Appendix B6(c): Schedule of services – mandatory education and training services

Applicants must indicate the education services for third parties for which signed contracts exist (or are understood to be going to exist). In the worksheet, applicants must detail contracts by commissioning body.

The applicant will need to specify:

- Commissioning body (where appropriate) or third party
- Accrediting educational body
- Length of contract
- Type of student group for which the training is provided
- Type of training
- Number of students
- Value of contract

Appendix B6(d): Schedule of services – non-mandatory services

The applicant will be authorised to provide health and education and training services that are not mandatory. Monitor will not require non-mandatory services to be identified in a workbook.

NHS foundation trusts will, however, be expected to maintain a public and up-to-date register of the authorised goods and services which they are currently providing, including:

- Mandatory health services
- Non-mandatory health services
- Education and training Services provided to third parties

The applicant will be authorised to provide:

- Accommodation and other facilities
- Research

Monitor does not require these services to be identified in a workbook, nor will NHS foundation trusts be expected to maintain a register of these services.

Appendix B7: Protected property

- Protected property includes land, and buildings that is needed for the provision of any mandatory goods and services or mandatory education and training.
- Monitor will not require protected property to be identified in a workbook at this time. NHS foundation trusts will, however, be expected to maintain a publicly available property register, which indicates what property is protected.
- NHS foundation trusts may not dispose of any protected property without Monitor's approval. Disposing of property includes disposing of part of it or granting an interest in it. Monitor's approach to asset protection and disposal is risk-based: details of this can be found in the *Protection of Assets Guidance for NHS foundation trusts* dated 15 October 2004. Monitor does not require notification of agreed asset changes.
- There is therefore no requirement for applicants to submit further information on property at this stage.

Mental health trusts should note the following:

- Many mental health trusts operate from a number of small sites and these may be borrowed, rented, leased or owned. Protecting these assets should not place an unnecessary burden on trusts as many of these sites are not used to directly treat service users but are used as bases for community teams. Guidance is available from Monitor to assist applicants in deciding whether or not to protect their assets.



Appendix B8: Appropriateness of the constitution (matters over and above compliance with Schedule 7)

The constitution should comply with the following, in order to be considered 'otherwise appropriate':

1. A minimum age to be appointed as a governor should be included in the constitution, being at least 16 at the closing date for nominations.
2. Monitor will not specify a minimum age for members. It is for the trust to justify the age. However, it should be noted that it is not permissible, pursuant to the 2006 Act to establish lesser categories of membership, such as associate membership.
3. It is for the applicant trust to consider whether it requires a dispute resolution clause to resolve disputes between the board of directors and the board of governors; Monitor does not require such a clause to be included.
4. Schedule 7 to the Act does not require any reference to a nomination committee. However, if the constitution is to refer to a nomination committee, it must be stressed that the nomination committee must only perform a role in selection rather than appointment. Having said that, once that is expressly confirmed in the constitution, the nomination committee may be comprised of governors, directors, or advisers as the trust considers fit provided that the selection process does provide the board of governors with reasonable choice.
5. In accordance with the principles of good corporate governance, it is recommended that the constitution provide that at least half of the board of directors, excluding the chairman, should be non-executive directors. Alternatively, in the event that the constitution provides for parity on the board of directors between executive and non-executive directors, the chairman should have a casting vote.
6. The name of the applicant trust must include the words "NHS Foundation Trust" and is subject to approval by Monitor. Applicant trusts should avoid terms that may be misleading, inaccurate or risk causing confusion. If appropriate, applicant trusts should consult over the proposed name.

Appendix B9: Proforma board statement

Private and confidential

Monitor – Independent Regulator of NHS Foundation Trusts

[Date]

[NHS foundation trust]

Working capital

In connection with the application of [NAME OF THE TRUST] for NHS foundation trust status the board of directors has reviewed the NHS trust's future working capital requirements from [Date of working capital period]. The results of this review are set out in the attached Board memorandum dated [DATE XX/XX/XX] which has been prepared after due and careful enquiry.

In the opinion of the board of directors, [taking into account the trust's new working capital facilities], the working capital available to the trust is sufficient for its present requirements, that is at least the 12 months from [DATE XX/XX/XX].

Financial reporting procedures

The board of directors confirm that they have established procedures which provide a reasonable basis for them to reach proper judgement as to the financial position and prospects of the trust.

The basis of the board of directors confirmation is set out in the attached board memorandum dated [DATE]. The board of directors confirm that it will continue to maintain procedures at or exceeding this level of quality subsequent to [DATE].

Yours faithfully

For and on behalf of the board of directors,
[...] NHS trust

Appendix B10: Contents of board memorandum

This is a word document summarising a suggested table of contents for the board memorandum.

The preparation of the board memorandum and the forecasts therein are the responsibility of the directors:

1. Introduction and background
2. Executive summary:
 - Summary of headroom
 - Key assumptions
 - Sensitivities
 - Financial reporting procedures
 - Conclusion
3. Basis of preparation
4. Key assumptions:
 - Income
 - Other income
 - Commercial & other non-patient Income
 - Expenditure (pay and non-pay)
 - Other factors
5. Income and expenditure accounts:
 - Summary of historical and projected income and expenditure
 - Analysis by income and expenditure category
6. Balance sheets:
 - Summary of historical and projected balance sheet
 - Analysis by balance sheet category
7. Cash flows:
 - Summary of headroom
 - Analysis of cash movements
 - Facilities and covenants
8. Sensitivities
9. Financial reporting procedures:
 - Management reporting
 - Board involvement
 - The finance department
 - Financial reporting processes
 - Financial awareness
 - Internal and external audit
 - Forecasting and monitoring process
 - Prior forecasting history

10. Conclusion:

- Board statement on working capital and financial reporting procedures

11. Factual accuracy:

- Board confirmation of factual accuracy (suggested wording as follows)

“We have read the report on the trust’s projected working capital requirements and financial reporting procedures report prepared by [Independent

Accounting Firm] dated [date] and confirm the following:

- We are not aware of any factual inaccuracies within the draft report;
- Opinions and representations, which have been attributed to persons referred to in the report, are properly attributed to those persons.

Signed on behalf of the board:

Director:

Date:

Appendix B11: Prudential borrowing code ratios

The ratios used in the Prudential Borrowing Code in force at the time of writing (published 22 March 2005) are shown below. However, these are subject to change. Applicants

should check Monitor's website at the time of application to access the ratios in force at that time.

PBC 5 Ratio Test

Ratios	Threshold at annual financial risk rating				
	5	4	3	2	1
Maximum Debt to Capital Ratios	$\frac{\text{Long-Term Borrowing}}{\text{Total Assets}}$				
	<40%	<25%	<15%	<10%	<0%*
Minimum Dividend Cover	$\frac{\text{Revenue Available for Debt Service} - \text{Annual Interest}}{\text{Annual Dividend Payable on PDC}}$				
	>1x	>1x	>1x	>1x	>1x
Minimum Interest Cover	$\frac{\text{Revenue Available for Debt Service}}{\text{Maximum Annual Interest}}$				
	>3x	>3x	>3x	>3x	>3x
Minimum Debt Service Cover	$\frac{\text{Revenue Available for Debt Service}}{\text{Maximum Annual Debt Service}}$				
	>2x	>2x	>2x	>2x	>2x
Maximum Debt Service to Revenue	$\frac{\text{Maximum Annual Debt Service}}{\text{Revenue}}$				
	<3%	<3%	<3%	<3%	<3%

* Decided on case-by-case basis

NB: For each NHS foundation trust, the sum of borrowings from all sources must be within the prudential borrowing limit set by Monitor in the Terms of Authorisation. The Terms of Authorisation will be published on Monitor's website.

An NHS foundation trust's prudential borrowing limit consists of 2 components:

- (i) the maximum cumulative amount of long-term borrowing that enables the NHS foundation trust to pass the five ratio tests set out above for its annual risk rating; and
- (ii) the amount of any approved working capital facility.

Appendix B12: Board statements

Clinical quality

The board of directors is required to confirm the following:

- The board is satisfied that, to the best of its knowledge and using its own processes (supported by Healthcare Commission metrics and including any further metrics it chooses to adopt), its aspirant NHS foundation 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; and
- The board is satisfied that to the best of their knowledge and using their own processes, plans in place are sufficient to ensure ongoing compliance with the Health Act 2006: Code of Practice for the Prevention and Control of Healthcare Associated Infections (“The Hygiene Code”).

Service performance

The board of directors is required to confirm the following:

- The board is satisfied that plans in place are sufficient to ensure ongoing compliance with all existing targets¹ (after the application of thresholds) and national core standards², and a commitment to comply with all known targets going forwards.

Other risk management processes

The board of directors is required to confirm the following:

- Issues and concerns raised by external audit and external assessment groups (including reports for NHS Litigation Authority assessments) have been addressed and resolved. Where any issues or concerns are outstanding, the board is confident that there are appropriate action plans in place to address the issues in a timely manner;
- All recommendations to the board from the audit committee are implemented in a timely and robust manner and to the satisfaction of the body concerned;
- The necessary planning, performance management and risk management processes are in place to deliver the business plan;
- A Statement of Internal Control (“SIC”) is in place, and the aspirant NHS foundation trust is compliant with the risk management and assurance framework requirements that support the SIC pursuant to most up to date guidance from HM Treasury (www.hm-treasury.gov.uk); and
- All key risks to compliance with their Authorisation have been identified and addressed.

¹ As set out in Appendix B to the Compliance Framework

² As set out in Standards for Better Health published July 2004

Board roles, structures and capacity

The board of directors is required to confirm the following:

- The board maintains its register of interests, and can specifically confirm that there are no material conflicts of interest in the board;
- The board is satisfied that all directors are appropriately qualified to discharge their functions effectively, including setting strategy, monitoring and managing performance, and ensuring management capacity and capability;
- The selection process and training programmes in place ensure that the non-executive directors have appropriate experience and skills;
- The management team has the capability and experience necessary to deliver the business plan; and
- The management structure in place is adequate to deliver the trust's business plan.

Signed for and on behalf of the board:

Title:

Date:

Trust:

Appendix B13: Example batching checklist

Area	Questions to address
Local health economy	<ul style="list-style-type: none"> • Are there significant deficits in the local health economy? • Are the trust's major commissioners facing financial difficulties? • Is the trust having difficulty agreeing contracts for the current year? • Does the trust have to implement capacity reduction plans to address the local health economy position?
Stability of income flows	<ul style="list-style-type: none"> • Is there a major consultation affecting services, and is it material to the applicant's plans? • Does the trust have material research and development funding which will transition away under new research & development allocations? • Are there any other material income sources which are subject to potential reductions?
Underlying deficits	<ul style="list-style-type: none"> • Does the trust have a track record of underlying deficits? • Is a return to surplus dependent on significant cost improvement programmes and or activity growth? • Has the trust received a loan to repay historical deficits? What are the repayment terms?
Cost improvement programmes	<ul style="list-style-type: none"> • Is the financial plan dependent on significant cost improvement programmes? Is there historical evidence of achievement?
Contingent liabilities	<ul style="list-style-type: none"> • Is there any significant litigation facing the trust or contingent liabilities? • Does the trust have the cash resource to meet these claims if the liability crystallises?
Cash flows	<ul style="list-style-type: none"> • Is first year cash flow dependent on significant working capital inflows to arrive at a positive position? Is there evidence to support this inflow? • Is there repayment of public dividend capital in the first year? • Is significant committed capex funded?
Board vacancies	<ul style="list-style-type: none"> • Are there vacancies on the board and if so what positions? • Is there a non-executive director on the board with recent and relevant financial experience?
Financial reporting procedure concerns	<ul style="list-style-type: none"> • Are there major financial reporting procedure findings requiring more time to resolve identified in the historical due diligence?
Clinical issues	<ul style="list-style-type: none"> • Is there a reasonable likelihood that performance against standards and targets will lead to a red governance rating at authorisation? • Is there an ongoing independent inquiry into clinical issues being conducted at the trust?
Private finance initiative affordability (PFI)	<ul style="list-style-type: none"> • Does the integrated business plan include a major PFI scheme? • What are the key revenue and cost assumptions which support the scheme's affordability? Are they considered reasonable against benchmarked data?
Major transactions	<ul style="list-style-type: none"> • Has the trust undergone a significant or material transaction in the last year as defined in the <i>Compliance Framework</i>? • For significant transactions is there an audited track record of at least 12 months for the enlarged organisation? • For material transactions is there at least six months track record?

Appendix B14: Example board job descriptions

Chair – outline job description

Responsibilities to include the following:

Strategy

- provide leadership to the board of governors and the board of directors, ensuring their effectiveness in all aspects of their role and agenda;
- work with board members in developing and promoting the trust's vision, values, aims and strategic objectives;
- pro-actively direct and manage major board decisions and their development ensuring that 'due process' has been applied at all stages of decision making and full and complete consideration has been given to all options during the process; and
- lead and direct work within the trust with other non-executives, the chief executive and other executive directors.

Human resources

- support, encourage and where appropriate 'mentor' other board members and senior executives;
- arrange the regular evaluation of the performance of the board of governors and the board of directors, their committees and individual directors, and facilitate the effective contribution of non-executive directors, directors and governors and ensure constructive relations; and

- take responsibility, in conjunction with the board, for own personal development and ensure that this remains a priority.

Operations

- take responsibility for ensuring that the board monitors the progress of the business against the planned objectives;
- use general management and leadership ability and personal knowledge of the community to guide and advise on the work of the board of directors and governors of the trust;
- ensure that the board establishes clear objectives to deliver the agreed plans and meet the terms of its authorisation and regularly review performance against these objectives;
- plan and conduct board meetings, in conjunction with the chief executive;
- encourage the best use of resources including the development of effective risk and performance management processes;
- share and use relevant expertise with senior managers and clinicians in a changing healthcare environment;
- promote appropriate processes and procedures to deliver high standards of professional, clinical, administrative and personal behaviours across the trust;

- be aware of and understand relevant, regulatory and central government policies; and
- comply at all times with the trust's published health and safety policies, in particular, by following agreed safe working procedures and reporting incidents using the trust's risk reporting systems.

Communication and relationships

- Ensure the effectiveness and constructive dialogue and promote harmonious relations with the following bodies as relevant:
 - board of directors;
 - board of governors;
 - stakeholders in the trust's community;
 - national healthcare stakeholders; and
 - regulators such as Monitor and the Healthcare Commission.
- Ensure the provision of accurate, timely and clear information to directors and governors, so that within the boundaries of probity, good governance and risk, the trust meets all its statutory objectives and remains within the terms of its authorisation;
- participate fully in the work of the board of directors and of governors and maintain appropriate links with the chief executive and individual directors, as well as with the wider local and national health and social care community;
- develop high level relationships with key stakeholders, including the trust's financiers, but ensuring that the interests of all stakeholders are fairly balanced at all times;

- bring balance to the use and influence of external advisers;
- represent the trust's views with national, regional or local bodies or individuals and ensure that the views of a wide range of stakeholders are considered;
- uphold the values of the trust, to be an appropriate role model and to ensure that the board promotes equality and diversity for all its patients, staff and other stakeholders;
- be an ambassador for the trust; be knowledgeable and aware of local issues, and assist the trust in its efforts to support local regeneration as a major employer; and
- set an example on all policies and procedures designed to ensure equality of employment. Staff, patients and visitors must be treated equally irrespective of gender, ethnic origin, age, disability, sexual orientation, religion etc.

Chief executive officer – outline job description

Responsibilities to include the following:

Strategy

- work with board members in developing and promoting the trust's vision, values, aims and strategic objectives;
- manage the trust in accordance with its values and objectives and the general policies and specific decisions of the board and ensure that all activities are directed towards the achievement of these;
- review and evaluate present and future opportunities, threats and risks in the external environment and current and future strengths, weaknesses and risks to the trust;

- challenge conventional approaches and welcome and drive forward change when needed;
- understand, assess and manage strategic, reputational and operational risk; and
- produce, review and revise the organisation's business plan to ensure that it is geared to achieving the trust's vision and strategy including developing the trust.

Human resources

- manage, motivate and control other board members and members of the trust's management team;
- determine when to change and when to consolidate, understand the impact of change on people and manage it with sensitivity;
- develop effective working relationships and communications with staff and ensure that staff are motivated, developed, supported and respected; and
- act as a driver for equality and diversity, both as an employer and provider of services, ensuring that effective policies and procedures are in place and promoted.

Operations

- draw the board's attention to matters it should consider and decide upon, ensuring proper attention is given to them;
- ensure that the board is given the advice and information necessary to perform its duties and that the business of the board is properly conducted;
- establish systems of control and limits of delegation and provide the board with regular assurance on their effectiveness;

- establish strong systems for performance management, focused on continuous improvement in the delivery of services and maintain close relationships with the relevant regulatory bodies;
- maintain the highest standards of conduct and integrity within the trust and ensure compliance with best practice, statute and regulatory requirements in all matters including financial, governance, legal and clinical related issues;
- understand the legal position in relation to all key aspects of the business, financial assets, people, IT and intellectual property; and
- ensure that health and safety policies and procedures reflect current best practice and are discharged effectively by all staff.

Communication and relationships

- promote effective joint working with external stakeholders towards the achievement of the trust's strategic objectives, and with any other key partners;
- develop and maintain a strong sense of accountability to stakeholders throughout the trust;
- establish effective working relationships with key agencies and current and potential partners at national, regional sub-regional and local levels;
- promote and maintain harmonious and productive working relationships with the recognised trade unions, professional bodies and staff representatives; and
- promote public understanding of the trust's values, objectives, policies and services.

Finance director – outline job description

Responsibilities to include the following:

Advise the chief executive, the board of directors and board of governors on all aspects of:

- financial strategy and financial management;
 - procurement and supplies;
 - payroll;
 - financial risk;
 - investment appraisal;
 - raising of debt and other finance;
 - covenant compliance;
 - cash flow management;
 - PR/communications on aspects of finance issues;
 - commercial opportunities and risks;
 - financial responsibilities and issues; related to being an NHS foundation trust; and
 - financial systems development.
- Provide strategic leadership for finance across the organisation and help strengthen its contribution to the trust's activities;
 - provide comprehensive financial services to the trust including production of budget proposals, development of effective budgetary control systems, the provision of accurate and timely information/advice and compilation of monthly management returns and end of year accounts for statutory and/or regulatory purposes;
 - develop and implement effective and innovative ways of producing information for budget holders, educating those who commit resources to promote the most effective use of resources in line with the needs of the service;
 - appraise current and forecast outcomes of operational strategies and report on financial performance to the board and stakeholders and regulators as appropriate;
 - effectively manage financial agreements between the trust and its stakeholders to ensure appropriate recovery of costs;
 - facilitate and provide training opportunities for finance, information and procurement staff to ensure the trust has appropriately skilled staff to meet its requirements and ensure that these functions are adequately resourced;



- oversee all financial systems and internal controls, including the development and modification of accounting systems when required;
 - maintain relationships with external professional advisers including but not limited to the trust's lawyers and management consultants;
 - manage relationships with internal and external audit functions and, with the chief executive officer, play a leading role in liaison with any regulatory bodies;
 - identify surplus assets and develop divestment programmes as appropriate;
 - apply rigorous generally accepted commercial disciplines and techniques in assessing viability of investment proposals;
 - maintain relationships with providers of finance. Ensure that the trust's financing profile is cost effective and long and short term requirements are properly matched;
 - maintain stringent liquidity controls through a process of tight and cost effective cash management procedures in order to minimise the utilisation of the trust's credit facilities;
 - meet agreed targets and objectives, and deliver within defined costs, timescales and resources;
 - contribute to the maintenance of constructive and fruitful working relationships with all members of the health community to foster a strong culture of partnership working;
 - ensure that the trust continues to implement national policies relating to finance particularly payment-by-results, in a way which maximises the financial benefit and stability of the organisation;
 - provide advice and support to the trust's governance structures as required, including the board of directors, board of governors and audit committee; and
 - develop and implement an effective strategy for the efficient maintenance, utilisation, safe custody and protection of ownership of the trust's fixed assets including real estate.
- 

Non-executive directors – outline job description

Responsibilities to include the following:

- commit to working to, and encouraging within the trust, the highest standards of probity, integrity and governance and contribute to ensuring that the trust's internal governance arrangements conform with best practice and statutory requirements;
- provide independent judgement and advice on issues of strategy, vision, performance, resources and standards of conduct and constructively challenge, influence and help the executive board develop proposals on such strategies;
- structure the performance of management in meeting agreed goals and objectives;
- in accordance with agreed board procedures, monitor the performance and conduct of management in meeting agreed goals and objectives and statutory responsibilities, including the preparation of annual reports and annual accounts and other statutory duties;
- obtain comfort that financial information is accurate and that financial controls and risk management systems are robust and defensible;
- contribute to the determination of appropriate levels of remuneration for executive directors;
- chair [participate in] the audit committee and take an active part in other committees (including the investment and remuneration committees) established by the board of directors to exercise delegated responsibility. In respect of the audit committee, at least one of the non-executive director members of the committee should have recent and relevant financial experience;
- as a member of board committees, appoint, remove, support, encourage and where appropriate 'mentor' senior executives;
- bring independent judgement and experience based on commercial, financial, legal or governance expertise from outside the trust and apply this to the benefit of the trust, its stakeholders and its wider community;
- assist fellow directors in setting the trust's strategic aims, ensuring that the necessary financial and human resources are in place for the trust to meet its objectives, and that performance is effectively monitored and reviewed;
- assist fellow directors in providing entrepreneurial leadership to the trust within a framework of prudent and effective controls, which enable risk to be assessed and managed;
- assist fellow directors in setting the trust's values and standards and ensure that its obligations to its stakeholders and the wider community are understood and fairly balanced at all times; and
- engage positively and collaboratively in board discussion of agenda items and act as an ambassador for the trust in engagement with stakeholders including the local community, dealing with the media when appropriate.

Appendix B15: Example membership report

Public constituency	Number of members	Eligible membership	Over or under representation
Gender Male Female			
Age (years) 0-16 17-21 22+			
Ethnicity White Mixed Asian or Asian British Black or Black British Other			
Socio-economic sub-grouping³ ABC1 C2 D E			
Patient constituency	Number of members	Eligible membership	Over or under representation
Age (years) 0-16 17-21 22+			

Commentary: Plans to develop a representative membership by reference to the table of current membership with a particular focus on under-represented groups.

³ Socio-economic data should be completed using profiling techniques (e.g. postcodes) or other recognised methods. To the extent socio-economic data is not already collected from members, it is not anticipated that applicants will make a direct approach to members to collect this information.

Appendix B16: Section 75 and other forms of agreement

Introduction

This appendix outlines key principles to be addressed in local arrangements when assessing how they will work in an NHS foundation trust environment.

Applicants should ensure through their own legal advice where necessary that all agreements accord with legislative requirements such as the Health Act 1999.

Guidance on the use of the Health Act in particular is also available from the Integrated Care Network:

www.networks.csip.org.uk/icn/

Issues which are likely to require review within any contracts and agreements are as follows:

1 Form of agreement

- a Does the trust have agreements with its local authorities?
- b Are these agreements enabling frameworks, or detailed forms of contract?
- c Is the trust content to carry these forms of agreement forward as an NHS foundation trust?
- d If not, what changes might be needed?

2 Benefits

- a Is it clear from these agreements what the trust is hoping to achieve and how it shall perform its duties within the partnership ie delivery of the service, operating duties plus measurable milestones in terms of:
 - service change?
 - service improvement?
 - user experience?
 - financial efficiencies?
 - financial growth?
 - influence over future service direction locally?
- b Have any of these benefits been achieved to date?
- c How will these benefits be secured and safeguarded as an NHS foundation trust?
- d What new opportunities for benefits might be available as an NHS foundation trust?
- e What changes might be needed to secure these benefits?

3 Finance and risk

- a Where the trust is operating within a 'pooled' arrangement under s.75 of the Health Act, is it satisfied that it has complied with the requirement for NHS commissioner consent to pool the resources which are the subject of the agreement/s?
- b Are the agreements satisfactory in terms of demonstrating financial viability against the agreed objectives, targets and measurable milestones?
- c How do existing arrangements between the trust and its local authorities deal with reporting arrangements for information on finance and activity performance?
- d How do the existing arrangements address process for managing financial risk and its distribution in terms of:
- contracts and collaboration with third-party providers?
 - overspends?
 - underspends?
 - budgetary pressures?
 - virement?
 - annual inflation?
 - cost improvements?
 - new investment proposals?

- e How could agreements between trusts and local authorities be made sensitive to service volumes and service quality?
- f Are the arrangements for indemnity and liability adequate?
- g Is the trust content to carry forward this pattern of financial and service risks as an NHS foundation trust?
- h If not, what changes might be needed?

4 Staffing

- a Has the trust seconded staff in or out as part of an agreement?
- b Has the trust transferred staff under TUPE in or out as part of an agreement?
- c Are the agreements about management of 'integrated staff' which can undertake each other's duties; or are the agreements about 'integrated management' of staff on behalf of a partner, without full integration of staff duties?
- d Is the trust clear on the differences within 4c and the impact upon stability and viability of trust business?
- e Is the trust content to carry forward this pattern of staffing as an NHS foundation trust?
- f If not, what changes might be needed?

5 Governance

- a Are there arrangements for governance, monitoring and review of any local agreements?
- b If so, have they proved effective? Is the trust content to carry forward this pattern of governance as an NHS foundation trust?
- c If not, what changes might be needed?

6 Disputes

- a Do the trust's agreements contain procedures for dispute resolution?
- b If so, have these been tested? Did they prove effective?
- c If not, what changes might be required in preparation for NHS foundation trust status?

7 Changes

- a In summary, is the trust content with the current structure of its agreements with its local authorities?
- b What changes would be required to bring about a better structure?
- c What local work would be required to bring about those changes in order to ensure fit with the NHS foundation trust framework?

Appendix B17: The model contract for mental health trusts

The Department of Health has developed a new model contract to cover the commissioning relationship between mental health NHS foundation trusts and their commissioners. This contract is due to be released for adoption from April 2009. Mental health applicant trusts using this contract as the basis for negotiations with their commissioners need to ensure they can demonstrate 18 months of contracted income.

In preparation for the release of the new model contract, all mental health trust applicants will need to ensure that:

- the quality of local data is adequate to enable the service level to be monitored by commissioners and providers;
- the effect of changes to the model contract, and to future service levels, have been modelled and understood by both the trust and its primary care trusts;
- local commissioners also have the capacity to undertake the necessary work;
- the overall percentage balance of block/non-block work undertaken by the trust is acceptable to all parties, including Monitor;
- for any cost and volume contracts, ensure there is complete clarity as to services covered by the contract (as opposed to the block) and as to demand management arrangements (see above); and
- with any cost and volume contracts, ensure that consideration is given to the potential for varying tolerance levels and marginal rates.

Appendix B18: The care group approach

The “care group” approach was proposed by the first group of mental health trust applicants. It is categorised into six “care groups” (i.e. adults, etc.) and then sub-categorised into a number of “care sub-groups” (i.e. acute inpatient, community mental health teams, etc.). This in essence provides a standardised framework

within which mental health trusts profile the services they undertake. Additional care sub-groups can be added by mental health trusts as necessary although this should be considered the exception as opposed to the rule.

Although service definitions and currencies are down to individual mental health trusts to decide, they are requested to use definitions from the reference cost or Durham listings in the first instance where appropriate.

Care Group	Care Sub-groups	Service definition/currency
Adults	Acute inpatient CMHT Assertive outreach team Crisis resolution team Early intervention team PICU Rehabilitation – inpatient Rehabilitation – community Low secure Medium secure High secure Mother & baby Eating disorders – inpatient Eating disorders – community Prison inreach Personality disorder Psychiatric liaison Daycare Court diversion	
CAMHS	Tier 1 Tier 2 Tier 3 Tier 4	

Care Group	Care Sub-groups	Service definition/currency
Older people	Inpatient – functional Inpatient – organic Inpatient – mix CMHT Outpatient & daycase	
Substance misuse	Inpatient Community Outpatient	
Learning disability	Inpatient (i.e. assess treat) CLDT Activities of daily living	
Other	Supporting people Clinical services other than mental health and learning disabilities	

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