Applying for a Merger involving an NHS Foundation Trust

Guide for Applicants
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1 Monitor’s approach towards regulating mergers

This document explains the process to be followed in assessing a proposal for a merger involving one or more NHS foundation trusts. There will be a separate consultation on how the impact of a proposed merger on access, choice and competition will be assessed. This document is mandatory guidance for the purpose of condition 4(2) of the Terms of Authorisation (ToA).

The legislative framework, which is contained in sections 27 and 28 of the Health and Social Care (Community Health and Standards) Act 2003 (“the Act”), involves the creation of a new foundation trust from the predecessor organisations, either two existing foundation trusts or a foundation trust and an NHS trust. It provides only for the joint application and merger of two willing partners. There is no provision in the legislation for contested takeovers. A proposed merger which is not supported by the boards of both parties will not proceed.

NHS foundation trusts have powers to invest under section 17 of the Act, and this includes the acquisition of other corporate bodies, their assets, staff and contracts. A proposal from a foundation trust to acquire, in whole or in part, another foundation trust, an NHS trust or a private-sector business, is dealt with by Monitor under its best practice advice, Risk Evaluation for Investment Decisions by NHS foundation trusts, published in February 2006.

In the case of a proposed merger where one party is an NHS trust, the support of the Secretary of State must be obtained before the application can go ahead.

Under section 27, if a merger application is authorised by Monitor, the two applicant trusts will be dissolved and a new NHS foundation trust will be created. The combined entity therefore needs to be legally constituted, financially viable and well governed. Similar considerations arise in the case of an acquisition by a foundation trust, although here the foundation trust is not dissolved.
There is extensive research that demonstrates that realising the full benefits of a merger can be difficult, and is critically dependent on a robust advance plan for integrating the two entities. Monitor believes that mergers have the potential to create a number of significant risks to an NHS foundation trust’s ability to comply with its Terms of Authorisation. At the same time, well planned and executed mergers have the potential to create real value for patients, staff and the tax payer.

Monitor will, therefore, require submission of a detailed integration plan. It is important that there is agreement of the board and the senior management team on the services that the new foundation trust will provide, and how these will be organised and led, before the proposal is submitted for approval. The plan should also demonstrate that the new organisation will generate a sustainable net income surplus by year three of the business plan and maintain a reasonable cash position. Unless there are exceptional circumstances, the financial risk rating in the first year must be a minimum risk rating of 3.1

It is also important that the parties to the merger consider early in the process how membership will be organised and how the members and the board of governors will relate to the new organisation and to its components.

Mergers are seldom the solution to inherent weaknesses in organisations. To be successful the organisations concerned need first to address the problems they face in the short term, whether these involve cutting costs, improving models of care, tackling governance weaknesses or other issues. Mergers will succeed if the result of coming together is a material improvement in performance, from releasing economies of scale, to rationalising the estate or the pattern of services, to generating a level of income that can support a higher investment than either organisation could individually support. To be successful, mergers must be meticulously researched and planned.

Monitor’s process, as described in the remainder of this document, is designed to ensure that these issues are assessed in detail and to avoid energy and money being wasted on proposals that are unlikely to be approved.

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2 Overview of merger assessment process

2.1 Legal framework for mergers under the Act
By section 27 of the Act, Monitor has the authority and obligation to review proposed mergers involving NHS foundation trusts and to approve, defer or reject them.

If Monitor approves such a merger, the two merging trusts will be dissolved, and a new NHS foundation trust will be created in their place. The resulting merged and new entity will itself be an NHS foundation trust, subject to the same programme of regulation and monitoring as all other NHS foundation trusts. Therefore, and as envisaged by section 27, the merger assessment process will be very similar to the assessment process for NHS trusts or public benefit corporations to be authorised as an NHS foundation trust, with specific additions relating to the merger itself.

2.2 Application and approval process for mergers under section 27
The characteristics of a section 27 merger application are:

- it must be made jointly by the two trusts intending to merge;
- the parties may be either two NHS foundation trusts or an NHS foundation trust and another NHS trust (if one of the parties is an NHS trust, the application must be supported by the Secretary of State for Health); and
- if the application is successful, both bodies will be dissolved and a new NHS foundation trust will be created containing some or all of the property and liabilities of both previous trusts.

The complete text of the relevant sections of the Act is in appendix 2.

During the review of the application for the merger, Monitor will conduct an assessment similar in scope and diligence to the assessment for applications for NHS trusts (or public benefit corporations) to become NHS foundation trusts. This may include activities such as:

- requests for additional materials;
- interviews of trust personnel by Monitor’s assessors (including review of submitted materials together with trust personnel); and
- if the materials are insufficient, discussions as to additional materials which must be provided, and analyses to be conducted, to satisfy Monitor's requirements.

2.2.1 Summary process, including key roles and responsibilities
The diagrams to follow give an overview of the mergers assessment process, illustrating the following:

- diagram 1: overall process for mergers involving foundation trusts;
- diagram 2: merger timeline; and
- diagram 3: key steps and activities in merger process.

More detail on each step of the process is then given in the text following diagram 3.
Diagram 1: overall process for mergers involving foundation trusts

Mergers involving FTs and other NHS Trust

- Trust consults SHA on joint application
- Do PCTs and SHAs support the application?
  - Y, Does the Secretary of State support the application?
    - Y, Mergers involving FTs only
    - N, Merger proposal rejected or revised for resubmission
  - N, Merger proposal rejected or revised for resubmission

- Mergers involving FTs only
  - Public consultation in accordance with DH regulations
  - Trusts make joint application to Monitor
  - Pre-approval by Monitor to include views of SHAs and PCTs and access/choice/competition assessment, as necessary
  - Recruit members and appoint/elect governors
  - Monitor reviews application and requests additional information as necessary.
  - Is Monitor satisfied as to:
    - constitution of new merged trust;
    - representative membership;
    - provision of goods and services under Terms of Authorisation (i.e. revised schedule 2, 3);
    - compliance with DH regulations in public consultation; and
    - ‘any other requirements which the regulator considers appropriate’.
- Secretary of State gives order
- Monitor authorises new FT
- Merger proposal approved
Applying for a Merger involving an NHS Foundation Trust

Diagram 2: merger timeline

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Diagram 3: key steps and activities in merger process

Planning of merger proposal

- Constructing governance arrangements.
- Deciding management of proposed merged entity.
- Developing business plan for proposed merged entity.
- Developing post-merger integration plan.

Public consultation

- Engage with local stakeholders (formally and informally) to reach agreement on the merger plan.
- Publication and distribution of consultation document.

Monitor’s merger assessment

- Applicants provide all submissions to Monitor.
- Monitor pre-approves application based on access/choice/competition.
- Following pre-approval applicants recruit prospective members and conduct elections for prospective board of governors.
- Monitor reviews submissions: financial, governance, constitution, post-merger integration plan (e.g. Working Capital Review, financial reporting procedures, etc).
- Interviews and site visits, as required.
- Detailed review of access, choice and competition issues as necessary.

Merger approval

- Monitor officially authorises the new NHS foundation trust according to section 28 of the Act.
- Secretary of State gives an order for dissolution of applicant trusts and formation of new merged NHS foundation trust.
Applying for a Merger involving an NHS Foundation Trust

Step 1 – Secretary of State support
If the two trusts wishing to merge are an NHS foundation trust and an NHS trust, they must first obtain the support of the Secretary of State for their application to merge. The Secretary of State will seek to understand if the relevant strategic health authorities (SHAs) and primary care trusts (PCTs) have been consulted and whether they support the application.

If the two trusts intending to merge are both NHS foundation trusts, they do not have to seek support for their application from the Secretary of State, and can make their application directly to Monitor.

Step 2 – public consultation
Before applicants submit the required materials to Monitor for review, they must carry out a process of public consultation in accordance with existing best practice. Monitor does not anticipate being directly involved in the public consultation process. However, in accordance with the Act, to authorise the merger, Monitor must be satisfied that the applicants have complied with any regulations set out by the Department of Health. Monitor will require the boards of directors of both applicant trusts to self-certify that they have complied with any such regulations in the course of public consultation.

In that consultation applicants must seek the views of any persons prescribed by the Department of Health regulations, but specifically including:

- any patients’ forum for an applicant;
- the staff employed by the applicants;
- individuals who live in the areas proposed for the public constituency in the constitution submitted with the application;
- any local authority that would be authorised by the proposed constitution to appoint a member of the board of governors;
- if the proposed constitution provides for a patients’ constituency, individuals who would be able to apply to become members of that constituency; and
- any other persons prescribed by regulations.

On conclusion of the consultation, applicants should summarise the feedback they have received, as well as any changes they have made to the merger plan as a result.

Step 3 – joint application to Monitor
Following consultation, applicants may submit their joint application for merger to Monitor. Applicant trusts should request ‘expressions of interest’ in membership during the public consultation process. On completion of the consultation they may recruit provisional members of the proposed merged NHS foundation trust.

Step 4 – pre-approval by Monitor
Upon receiving an application for merger Monitor will review it to determine whether the merger application submissions are complete and whether the proposed merged entity, on first inspection, appears to meet the criteria for NHS foundation trust status: that it will be financially viable; legally constituted; and well governed.

At this stage, Monitor will also seek the views of the SHAs and PCTs as to whether the merger proposal meets the criteria set out jointly by Monitor and the Department of Health on access, choice and competition. Monitor does not anticipate conducting an in-depth investigation at this stage if the SHAs and PCTs associated with the applicant trusts are satisfied that

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This document is being drafted in conjunction with the Department of Health. If both applicants for merger are NHS foundation trusts, Monitor will take the lead on assessment of patient access, patient choice and competition effects of the merger; if one of the applicants is an NHS trust, the Department of Health will take the lead but the process and criteria used will be the same.
the merger is acceptable on the grounds of patient access, patient choice and competition. However, if there are disagreements that cannot be reconciled, applicant trusts should expect Monitor to investigate these issues before the full assessment of the merger. Therefore, applicant trusts are strongly urged to reach an understanding with their SHAs and PCTs on issues of patient access, patient choice and competition involved in the merger, before a formal application to Monitor is made.

If Monitor is satisfied with the application materials it receives, it will inform the applicant trusts (“pre-approval”) and proceed with a detailed review of the merger application. If Monitor is not satisfied, it will return the materials to the applicants with a written summary of the reasons for the return, and any conditions under which Monitor might accept a revised application. On pre-approval, applicant trusts may conduct elections for the provisional board of governors.

**Step 5 – detailed review by Monitor**
Monitor will then proceed to a detailed review of the merger application. This merger assessment process will be rigorous and thorough. Upon completion of the detailed review, Monitor will formally accept, reject or defer the application, though this does not preclude informal discussions in advance of the final decision.

**Step 6 – authorisation to be an NHS foundation trust**
Upon approval of an application for merger (under section 27 of the Act), Monitor will issue a certificate incorporating the merged entity as a public benefit corporation and authorise the corporation to become an NHS foundation trust.

As specified in section 28 of the Act, where such an authorisation is given, Monitor will specify the property and liabilities to be transferred to the new NHS foundation trust. It is Monitor’s expectation that, in the course of reviewing and discussing the application for merger, the parties to the merger and Monitor will come to mutual agreement about the property and liabilities to be transferred. However, applicant trusts should be aware that Monitor will ensure that the new NHS foundation trust is a party to all of the financial obligations held by both applicant trusts, particularly where there are private liabilities. External parties (e.g. creditors) should assume novation of debt obligations held by both merger parties, to the new NHS foundation trust.

**Step 7 – Secretary of State order**
When Monitor has authorised the corporation to become an NHS foundation trust, the Secretary of State will make an order dissolving the trusts in question, and transferring (or providing for the transfer of) the property and liabilities specified by Monitor to the new NHS foundation trust.

**2.3 What will be assessed, and how?**
Monitor’s approach to mergers is to apply a rigorous assessment process to review both the quality of the merger plan and the likelihood of its successful execution. This process will be similar in many respects to the process by which Monitor assesses NHS trusts in their applications to become NHS foundation trusts.

The overall 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 formed as a result of mergers under section 27 of the Act 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.
Applying for a Merger involving an NHS Foundation Trust

Specifically, applicants for merger will have to demonstrate to Monitor that the proposed merged entity will be able to satisfy Monitor's requirements with respect to:

- legal constitution and taking steps to ensure representative membership;
- governance in accordance with best practice;
- financial stability and remaining a 'going concern'; and
- provision of mandatory services.

To be approved to merge, applicant trusts for merger under section 27 of the Act ("applicants" or “applicant trusts” ) must:

- ensure the constitution of the merged trust complies with the Act and is otherwise appropriate;
- ensure the provision of mandatory services in the business plan and that the merged trust can comply with the Terms of the Authorisation;
- make governance proposals which provide a representative and complete governance strategy for the proposed merged entity, specifically, take steps to ensure that as a whole the membership of any public constituency and any patients' constituency will be representative of those eligible for such membership;
- provide board certification that the new trust will have the organisational capacity to deliver the business plan;
- provide a board statement which confirms there is sufficient working capital for the next 12 months and is accompanied by the appropriate professional opinion on this statement;
- provide a board statement that due care and consideration has been taken in forming the post-merger implementation plan in advance of the application to Monitor, accompanied by the appropriate professional opinion on this statement;
- provide board certification that financial reporting procedures are satisfactory and this is based on an appropriate professional opinion;
- have the board demonstrate that the trust can with a high likelihood generate a sustainable net income surplus by year three of the projected period and maintain a reasonable cash position;
- provide board certification that all national targets and standards are expected to be met by the merged entity in the coming 12 months, and that the merged entity will not be the subject of special measures; and
- have a minimum financial risk rating of 3 in the first year of projections unless exceptional circumstances exist.

Applicants will be required to demonstrate that their business plan incorporates the required level of mandatory services to be compliant with section 14 of the Act. Monitor may also look at other factors (e.g. the impact of the merger on patient choice and patient access to care) on a case-specific basis. Monitor’s merger assessment guidelines are detailed in section 3 and a comprehensive list of all required submissions is set out in appendix 3. These merger assessment guidelines should be read in conjunction with the Act.

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3 For contents of a business plan, refer to section 4.1.2 of the Guide for Wave 3 Applicants, published in November 2005, and available on Monitor's website and section 3.3 of this document.
4 In this and the following points, “board” refers to both existing boards of the applicant trusts.
2.4 How Monitor will work with applicant trusts
This section gives an overview of the process Monitor’s assessment team goes through in assessing merger applications involving NHS foundation trusts.

Monitor’s team
Monitor will conduct its assessment in accordance with the guidelines set out in section 4.3 of the Guide for Wave 3 Applicants. Monitor’s ultimate responsibility is to approve, reject or defer a merger application based on its assessment of the application. The process that Monitor uses to assess an application is summarised below.

Monitor’s roles and responsibilities
The applicant trusts will be assigned an assessment team which is led by a senior assessment manager. The senior assessment manager will contact trusts to make arrangements to start the merger assessment process once the application is made to Monitor (diagram 1). It is usual for Monitor’s assessment team to spend a number of days visiting the trust during the merger assessment process, to conduct initial interviews and follow-up analysis.

Interviewing key stakeholders
It is the responsibility of the applicant trusts to ensure that they cooperate fully with all parties during Monitor’s assessment. During the merger assessment process, the applicant trusts’ submissions will be reviewed and key personnel from within them will be interviewed. The assessment team will contact the applicants at the start of the merger assessment process to indicate who they wish to interview. It is usual to interview the boards, board sub-committees, the finance teams and clinical directors. Monitor will also conduct interviews with other external bodies and parties, including but not limited to external auditors, internal audit, SHAs and lead commissioning primary care trusts.

Review of third party reports
Monitor’s assessment team will also maintain a dialogue with the independent accountancy firms conducting the working capital review during the merger assessment phase 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.

The board to board presentation
As part of the merger assessment process the board of the proposed merged trust will be given the opportunity to present their business plan to Monitor’s Board at a ‘board to board’ meeting. This meeting is held part-way through the assessment period. The executive and non-executive directors of the proposed merged trust 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 on issues identified through the merger assessment and will focus on the three key areas: whether the proposed merged entity will be legally constituted; well governed; and financially viable. The feasibility of the post-merger integration plan will be covered in assessing financial viability.

Monitor’s Board decision meeting
Towards the end of the merger assessment process the assessment team will finalise papers to present at a decision board meeting, at which the merger application will be formally considered by Monitor’s Board. A decision may be made at this meeting to authorise, defer or reject the application.
3.0 Merger assessment guidelines

3.1 Is the proposed merged entity legally constituted?

3.1.1 Submissions
Monitor requires applicants to submit the following documents to enable assessment of the legality of the constitution for the proposed merged entity:

- Proposed constitution based on Monitor’s *NHS Foundation Trust Model Core Constitution* (the “model core”) with proposed changes tracked to record additions to the model core.
- The proposed constitution should incorporate by reference or as an annex the model election rules found in annex 5 of the model core. Any proposed departure from the model election rules should be shown as a tracked change.
- Summary of statutory consultation process outlined in section 27 of the Act (including issues raised and applicants’ responses).
- Proposals and timetable for the proposed membership and board of governor elections. Applicant trusts can ascertain expressions of interest in membership during the statutory consultation process. Recruitment of prospective members may be undertaken concurrently with the other reviews being undertaken by the SHAs and PCTs and Monitor’s pre-approval and merger assessment processes (diagram 3). Existing members would be eligible to transfer to the proposed merged NHS foundation trust. Once membership has been decided, prospective members should elect the prospective board of governors.

The prospective members and board of governors for the proposed merged entity are provisional in nature and will have none of the powers of a board of governors of a current NHS foundation trust until and unless the Secretary of State makes an order authorising the merged NHS foundation trust in accordance with section 28 of the Act.

- Subsequent update on implementation of membership strategy and initial elections.

3.1.2 Legally constituted? – questions Monitor will ask.
Monitor will ask the following questions in assessment to establish whether the proposed entity will be legally constituted. An overview of these questions and the related submissions is set out in appendix 4.

**Is the proposed constitution compliant with schedule 1 of the Act?**

- The purpose of this question is to ensure statutory compliance.
- The applicant is required to submit its proposed constitution based on Monitor’s *NHS Foundation Trust Model Core Constitution* with any additions shown as tracked changes.

**Is the proposed constitution otherwise appropriate?**

- This question aims to ensure that the constitution complies with the criteria set out in appendix 5.

**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 Act. Monitor will also consider the content of the consultation, and the applicants’ responses to the outcomes of the consultation process. Specific consultations that need to be demonstrated are included in the Act.
- The applicants are required to submit evidence of their consultation process and an account of the outcomes and changes made as a consequence.
- The applicants must also submit evidence that the consultation process has included:
  - any patients’ forums;
  - the staff employed by the applicants;
  - individuals who live in the areas proposed for the public constituency in the constitution submitted with the application;
  - any local authority that would be authorised to appoint a member to the board of governors by the proposed constitution including the overview and scrutiny committee of the local authority.
  - if the proposed constitution provides for a patients’ constituency, individuals who would be able to apply to become members of that constituency, and
  - any persons prescribed by regulations.

**Required submissions:**
summary of statutory consultation (including issues raised and the applicants’ response).

Have new members been recruited and have elections been held for the provisional board of governors?

- Was the election for provisional governors held by secret ballot?
- Were the provisional governors appointed in line with the proposed constitution and electoral rules? Recruitment of provisional members is an ongoing process and starts during the public consultation when consultees are asked to include expressions of interest in membership (diagram 3). Elections of the provisional governors should be carried out after notification of merger pre-approval by Monitor, and before final determination of the merger proposal by Monitor (diagram 3).

**Required submissions:**
details of electoral process and report on initial elections.
3.2 Is the proposed merged entity well governed?

3.2.1 Submissions

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

- membership strategy including steps taken to ensure representative membership for the proposed merged trust and steps going forward;
- update(s) on implementation of membership strategy will be required later on during the merger assessment process;
- composition of the board of the proposed merged trust;
- electoral rules and regulations (including how key risks are being addressed);
- register of proposed governors’ interests (to be submitted at a later stage in the merger assessment process i.e. after initial approval by Monitor and prior to authorisation of the new foundation trust);
- register of proposed directors’ interests;
- self-certification on areas specified in relation to management capability, experience, selection of non-executive directors and management structures per appendix 6;
- a letter from the chairmen of both applicant trust boards confirming that the respective boards have confidence in the arrangements in place for each area;
- The relevant paper(s) from both applicant trust boards (jointly) defining their approach to each area;
- copies of applicant trust board minutes confirming that the boards have confidence in the arrangements for each area, and that they record the discussions held in trust board meetings;
- direct evidence on performance management for both the applicant trusts and intended for the proposed merged trust;
  - Performance management strategy and policy documents approved by both applicant trust boards (jointly).
  - An example of the regular performance reports submitted to the boards of applicant trusts, which should reflect as closely as possible the procedures to be followed in the proposed merged trust.
  - Reports (including action plans where available) from inspectorates, including the Healthcare Commission, the Commission for Social Care Improvement, the Mental Health Act Commission and the National Oversight Group for High Security Hospitals.
  - Any further documentation that the applicants consider relevant to provide evidence in support of questions outlined on page 19, if the documents summarised above do not fully address the criteria.
- Direct evidence on risk management for both the applicant trusts and intended for the proposed merged trust;
  - A copy of the proposed risk management strategy and policies for the merged NHS foundation trust approved by the applicant trust boards. This should include criteria for measuring and evaluating risks, and procedures for establishing contingency plans.
  - Statement of internal control including the disclosures on non-compliance which should include disclosure of any significant internal controls issues (including serious untoward incidents from the last 18 months) and a schedule of evidence upon which the proposed trust board will rely for each criterion.
  - Management report demonstrating how they have satisfied themselves that they have adequate controls in place to manage risk. If the applicants have used any form of external review in the merger assessment process, Monitor will expect copies of the reports.
  - A copy of the applicant trusts’ self assessment on existing healthcare standards.
  - Evidence of compliance by both applicants with Clinical Negligence Scheme for Trusts (CNST) level 1. This should include any external assessment report and agreed action plan. If either applicant is currently undergoing assessment, please notify Monitor of the date when the merger assessment process is due to come to an end.
  - A report detailing how the risk management policies/procedures for the proposed merged trust will differ from those of the applicant trusts and the rationale for the difference, or the rationale for choice of one applicant trust's policy/procedure over another.
  - A statement from the applicant trust boards that there have been no material changes in the respective applicants’ risk management policies and processes since the individual assessments were made, or details of any significant changes made and confirmation that the processes have been implemented and are effective.
  - Trusts that operate a high security hospital should provide details of:
    - the trust’s licence for the provision of high secure facilities, including the expected renewal date and a description of the process for renewal;
    - the current system for managing risks at the high secure hospital, how the Secretary of State’s line-of-sight to the hospital’s operation will be maintained after authorisation;
    - details of any concerns raised by high secure PCTs and how these will be addressed; and
    - how key performance indicators relating to the high secure hospital will be monitored and managed after authorisation.

Before applying to Monitor, merger applicants must decide the composition of the board of directors for the proposed merged NHS foundation trust. Applicants should be aware that the board of directors for the proposed merged entity is provisional in nature, and will have none of the powers of a board of directors of a current NHS trust or NHS foundation trust, until and unless the Secretary of State makes an order authorising the merged NHS foundation trust in accordance with section 28 of the Act.

The following section describes in more detail the questions that Monitor will consider when assessing the governance arrangements of the proposed merged entity. An overview of these questions and the related submissions is provided in appendix 7.
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3.2.3 Well governed? – questions Monitor will ask

To assess the robustness of the governance submissions, Monitor will ask the following questions which are summarised in appendix 7.

Does the proposed merged entity provide a representative and comprehensive governance strategy?

Have the applicants taken steps to secure representative membership?

- This question aims to ensure that the applicants have taken steps to secure that, taken as a whole, the actual membership of the public constituency for the proposed merged trust (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 applicants have taken measures to avoid the over-representation of special interest groups in the new trust, or the under-representation of ethnic minority groups or people with disabilities or other special needs.
- Monitor will require an update on the implementation of the membership strategy after the provisional membership list for the elections has been closed.

**Required submissions:**
- proposed membership strategy; update on implementation of proposed membership strategy.

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

- The applicants are required to demonstrate an understanding of the issues involved and indicate how they intend to reduce potential risk. The applicants should also identify their arrangements, including a timeline, for the first round of elections and how potential governance risks are addressed within the current process.
- Prior to the final decision on the merger application, Monitor will require the declared election results. This will enable Monitor to assess whether the board of governors of the proposed merged trust offers a balanced representation.
- Monitor will expect the governors of the proposed merged trust to declare publicly, and maintain a register of any financial interest they 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:**
- proposed constitution; proposed governance arrangements and rationale; electoral rules and regulations (including how key issues are being addressed); account of the current electoral process; update on elections; register of proposed governors’ interests to be held by the new merged NHS foundation trust.
Are the affiliations and financial interests of the directors known?

Monitor will expect the proposed directors of the new merged trust (executive and non-executive) to declare publicly, and maintain a register of, any financial interest they 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:**
- register of proposed directors’ interests.

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

This question aims to clarify how the applicants intend governance structures to work in practice in the proposed merged trust. 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 duties 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 duties; and
- how interactions between the board of directors and board of governors in the proposed merged trust will work.

**Required submissions:**
- proposed constitution; governance arrangements and rationale together with appropriate commentary.
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Do the applicant trust boards believe that the new merged trust will have the organisational capacity necessary to deliver the business plan and do the applicant trust boards have a designated senior management team responsible for project managing the integration of the two entities?

Are the applicant trust boards confident that the senior management have the capability and experience necessary to deliver the strategy?

- The applicant trust boards are required to self-certify (jointly) that they believe that the senior management (executive directors and their direct reports) have the capability and experience needed to deliver the strategy:
  - Senior management of the proposed merged trust should be specified by name and position to Monitor, and direct contact information should be included.
  - Any relevant experience of proposed senior management (e.g. post-merger integration) which the applicant trusts consider relevant should be included.
  - Demonstrated experience and positive track record by the proposed management team with previous mergers will be beneficial to the application.

- Applicant trusts should perform background checks (including checking references) on the qualifications and history of the executive directors, and submit evidence of such checks as part of the application package.

**Required submissions:**

- self-certification on management capability and experience per appendix 6 (this certification may be tested by Monitor). Curriculum vitae and/or summary of relevant experience of proposed management team, as appropriate or requested.

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

- The applicant trust boards are required to certify that they have a selection process in place which ensures that non-executive directors in the proposed merged trust have the appropriate experience and skills. This should include consideration of the composition of board sub-committees.

**Required submissions:**

- self-certification on the selection process for non-executive directors, as per appendix 6. This certification may be tested by Monitor.

Are adequate management structures in place to deliver the strategy?

- The applicant trust boards are required to certify that they believe that the roles identified in the proposed merged trust match with the requirements of an NHS foundation trust.

**Required submissions:**

- self-certification on management structures, as per appendix 6. This certification may be tested by Monitor.
Are the necessary management processes in place to deliver the strategy?

The purpose of this question is to ensure that the processes set out below 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 for the proposed merged trust and are being monitored for both applicant trusts;
  - performance measures have been defined specifically for the post-merger integration plan;
  - reasonable targets have been identified for these measures which reflect the current performance of both applicant trusts;
  - a robust system is planned for managing performance against the targets both during the post-merger integration and afterwards (e.g. transparency of system/timeliness of reviews);
  - reporting lines in the new merged trust are clear (e.g. to ensure overall performance is managed) and there are no obstacles to put them in place immediately should the merger be approved; and
  - appropriate arrangements are planned to manage/respond to adverse performance in the following areas:
    - finance;
    - clinical and other operations;
    - organisation/human resources; and
    - key initiatives underpinning the 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 and the post-merger integration process);
  - 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 31 agreements) are clearly set out and understood by the boards of the applicant trusts;
  - it is clear to all parties who the partners are, and what their roles are;
  - 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 applicant trusts.

■ **Planning:** the applicant trust boards are required to certify that they are confident that effective strategic planning processes are in place.

**Required submissions:**
- business plan; self-certification on planning and risk management (appendix 6);
- direct evidence on risk and performance management; relevant reports from and associated action plans from inspectorates, including the Healthcare Commission, the Commission for Social Care Improvement, the Mental Health Act Commission and the National Oversight Group for High Security Hospitals.
3.3 Is the proposed merged entity financially viable?

3.3.1 Submissions
To demonstrate financial viability applicants will be expected to provide the following submissions to Monitor in relation to the proposed merged trust:

- the five-year integrated business plan;
- a completed financial model template covering working capital and the long term financial plan; and
- the working capital review;

The five-year business plan
Monitor will review the applicants’ business plan to understand the assumptions driving the plan, to identify key risks and to determine whether there are adequate processes in place for the proposed merged entity to achieve its goals and manage its risks. Monitor will also seek to ensure that mandatory services are being provided and will verify compliance with relevant statutory requirements e.g. the cap on private patient income (defined in appendix 8).

The business plan is a key document that should:

- explain the rationale for and detail plans for delivery of key mandatory services, including significant changes to be made post-merger;
- identify key assumptions underlying projections and their relationship to the local health economy;
- identify the impact of patient choice and competition for services on the activity assumptions;
- describe expected changes in case mix and the nature and cost of case management, including any expected changes in the volume and cost of secondary commissioning by the proposed merged trust (whether to the independent sector or to other NHS trusts);
- highlight major changes to the property portfolio post-merger, with particular emphasis on property material to provision of mandatory services;
- include analysis of the asset disposal plans for the coming year;
- detail major initiatives, such as cost reduction programmes, new investments, or synergies from the merger;
- explain the level of support for the merger in the local health community, in particular the level of PCT support;
- identify key risks to execution of the post-merger strategy;
- clarify major action and contingency plans to mitigate key risks; and
- describe the nature of any major partnerships or joint ventures (including section 31 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 for the proposed merged entity to gauge the financial viability and sustainability of the proposed merged trust’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 proposed merged trust.
To facilitate this review, Monitor will provide 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 the differing commissioning arrangements). Applicants will be required to populate this model with their long term financial projections covering projected income and expenditure (I&E), balance sheet and cash flow information for five years or up to ten years if an applicant has a major private finance initiative 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 proposed merged trust. The applicants should expect to be contacted by Monitor if further information or clarification is required.

The long term financial projections are 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 applicants’ projections in relation to their key risks. Clearly, these financial projections should be consistent with the business plan and will form the basis for discussing the post-merger plans at the board to board meeting. Monitor will only consider changes to the long term financial projections after this stage in exceptional circumstances.

Proposed borrowing levels should be based on the Prudential Borrowing Code for NHS Foundation Trusts\(^6\).

Monitor expects that most mergers will claim some savings/synergies or revenue improvements as a direct result of the merger. Monitor will require detailed financial support for such claims including:

- source(s) of the projected cost savings/synergies or revenue improvements;
- time frame in which they will be achieved;
- cost of achieving the savings or revenue improvements;
- key assumptions used; and
- scenario analysis to demonstrate risks to achievement of the plan.

An action plan should also be submitted to capture any projected savings, with relevant deadlines and milestones, and accountable individuals within the new proposed NHS foundation trust (more detail given in the following section covering the post-merger integration plan).

Finally, the business plan should set out clearly how any restructuring costs (including treatment of accumulated deficits or debts) will be handled, and how it is proposed that they will be funded. Upon review of the business plan, Monitor will assign a provisional risk rating to the proposed merged entity, using the same criteria as for newly authorised NHS foundation trusts (for more information, see the Compliance Framework on Monitor’s website). Unless there are exceptional circumstances, the financial risk rating in the first year must be a minimum risk rating of 3 (see footnote 1).
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Working capital review

■ Board statement
The applicant trust boards will need to provide Monitor with a joint statement that the proposed merged entity has sufficient working capital to meet its obligations for the first 12 months of operation post-merger (appendix 9). This joint board statement will need to 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 on sufficiency of working capital.
Applicants will be required to fund the cost of this work themselves and should not assume financial assistance will be available from the Department of Health.

■ Board memorandum
Together with the joint statement, the applicant trust boards 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 12 months of operation post-merger. This memorandum will also need to set out the projections for the second 12-month period (months 13–24 post-merger) 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 this opinion by the independent accountants, Monitor will provide applicants with a financial model template which has been designed to produce up to two years of monthly income and expenditure, 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. Checks are 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 applicant trust boards and the independent accountants will also be asked to report on the proposed merged trust’s financial reporting procedures. This will involve reviewing the proposed merged trust’s proposed corporate governance arrangements, high level controls, risk management processes, management reporting framework, financial controls and reporting procedures and audit arrangements.

■ Working capital facilities
Monitor accepts that in order to provide the requisite opinion by the applicant trust boards and the independent accountants, some applicants for merger may require working capital facilities. Applicants should therefore establish whether they can secure the necessary facilities from commercial banks. 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 arrangements to ensure they are satisfied that the facility is committed. Applicants are encouraged to contact the Foundation Trust Network for guidance in this area.
The facilities should be expressed to be conditional on approval of the merger and establishment of the new merged NHS foundation trust. If this looks unlikely, applicants should inform both Monitor (and the Department of Health, if one of the applicants is an NHS trust). Without sufficient working capital, applications for merger will not be approved.

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 mergers to be approved. However, the fact that a clean opinion has been issued is not in itself sufficient to ensure approval of the merger.

The responsibilities of the applicant trust boards in this 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 joint board statement confirming sufficiency of working capital; a pro forma is provided in appendix 9;
- producing a joint board memorandum, which sets out the projections, key assumptions and sensitivities that support the joint board statement covering the first year of operation post-merger 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 applicant trust boards at a public trust board meeting (or meetings); and
- reporting on the proposed financial reporting procedures of the proposed merged trust (appendix 9).

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

- providing a professional opinion to the applicant trust boards and Monitor’s Board on whether they have made their joint 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 post-merger;
- reporting on the proposed merged trust’s financial reporting procedures; and
- providing copies of their opinion and report to the applicant trust boards and Monitor.

The following section describes in more detail the questions that Monitor will ask in assessing the business plan. An overview of these questions and the related submissions is set out in appendix 10.
3.3.2 Financially viable? – questions Monitor will ask on the business plan

Is the business plan financially viable and sustainable?

This question addresses the extent to which the board demonstrates that the proposed merged trust can with a high likelihood generate a sustainable net income surplus by year three of the business plan 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 time frame that will give the trust time to carry out its integration plan and continue to adapt to a number of changes occurring within the healthcare system, including transition to payment by results and impact of patient choice;
- **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;
- **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 a plausible downside case; and

Unless there are exceptional circumstances, the financial risk rating in the first year must be a minimum rating of 3.

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 applicants propose to use the merger to improve health care in the local communities that they serve and to drive change and innovation through the business plan.

**Required submissions:**

business plan.
Are the key assumptions realistic (e.g. the impact of NHS policies such as payment by results, patient choice, and agenda for change)?

- This question aims to determine the realism and validity of the business plan and financial projections by testing the key underlying assumptions that have been made. In particular it will test the extent to which they are based on a realistic assessment of capability and of future risk and opportunity (including risks and opportunities inherent in the merger itself).
- In making this assessment Monitor will first look at the submitted materials and then engage in discussion with the applicants and key stakeholders. Monitor will seek to assure itself that associated risks have been quantified and factored into the plans.
- Merging trusts are expected to fund the mergers either from operational cash flow, or by borrowing money within their prudential borrowing limits. NHS foundation trusts should have no expectation that Monitor, the Department of Health, or any NHS body will provide funds for the purposes of merger.

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

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

- This question aims to assess the robustness of the proposed merged trust's key forecasts and financial viability, and variation in its underlying assumptions about revenue growth, cost savings, outcomes from the merger, etc. The question also addresses the extent to which risk has been mitigated by a clear set of contingency plans.
- Monitor will first analyse the scenarios presented by the applicants in their business plan, and will also test the key assumptions made by the applicants in their projections, in order to assess the impact on risk and opportunity. In doing this Monitor aims to determine the strength of the proposed merged trust's financial position when exposed to a variety of risks. Monitor will also assess the extent to which the applicant trust boards have identified the means to mitigate key risks and whether contingency plans exist.

What risks arise from the trusts' existing partnerships and joint ventures?

For each of its significant partnerships (including section 31 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).

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

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7 See Prudential Borrowing Code per footnote 5
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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 merger plan can be supported by the assumed cost base, and whether any significant changes (e.g. in unit costs of activity post-merger) have been clearly explained.
- Monitor will examine the assumptions and rationale underlying the applicants’ 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.
- Monitor will also closely compare the assumptions post-merger with current values for the applicant trusts to check that their derivation makes sense.
- Any transitional double running costs and one-off income and costs will be examined and stripped-out to arrive at a normalised earnings position for the proposed merged entity.

Required submissions:
- 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 applicants’ assumptions regarding asset base and capital expenditure post-merger 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 applicants’ 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.
- Monitor will examine the assumptions and rationale underlying the costs from the merger (and how the proposed merged trust plans to fund them), any projected revenue increases from new programs post-merger, and projected synergies or cost savings generated by the merger. Attention will be paid not only to the magnitude of these factors but their timing – e.g. the costs of a reorganisation should typically come before any realised cost savings from the same reorganisation. Applicants should cross-reference these factors with the business plan.
- Proposed borrowing levels should be based on the financial projections for the proposed merged entity in the first year post-merger, and on the Prudential Borrowing Code for NHS Foundation Trusts available from Monitor’s website.

Required submissions:
- working capital review, long term financial projections.
Is the implementation plan clear and consistent (e.g. cost improvement plans, post-merger integration plans, recruitment and borrowing)?

- This question seeks to assess the overall robustness of the post-merger financial plan by considering the key programmes, initiatives and investments contained in the 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 applicants and stakeholders in the local health economy. Consideration will also be given to the output of the public consultation process.

**Required submissions:**
- business plan, summary of public consultation outcomes.

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

Does the plan include the mandatory services?

- This question aims to ensure that the planned mandatory services for the proposed merged trust meet the mandatory activity levels and service mix agreed with the PCTs.
- Any changes from mandatory services currently provided by both applicant trusts should be clearly indicated by the applicants, and agreed by the PCTs.
- Changes in the total amount of services being provided by the applicant trusts post-merger will be treated as a service change in a manner similar to a service variation. Applicant trusts should consult the separate document, the *Variation of the Terms of Authorisation: Guidance for NHS Foundation Trusts*, available on Monitor’s website.

**Required submissions:**
- schedule of services (see section 3.4).

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

- This question aims to ensure that the 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:**
- business plan.
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Are the private patient income assumptions (if applicable) consistent with the cap?

The applicants will be required to outline the private patient income assumptions built into the business plan and projections as well as the method of categorisation and calculation (see appendix 8 for definition of private patient income).

Monitor will ensure that the applicants’ business plan and projections do not exceed the cap on private patient income, and that assumptions about private patient income are consistent with Monitor’s interpretation of the Act.

As part of the merger assessment process a cap on private patient income will be decided for the proposed new merged NHS foundation trust. Although the specific level will be set during the merger assessment process, applicant trusts should assume the limit on the proportion of private income received by the new merged NHS foundation trust will be set at a weighted average (on a revenue basis) of the limits for the applicant trusts. For statutory reasons the reference time period for the private patient cap is NHS financial year 2002-03.

Required submissions:

business plan, details on private patient income assumptions (where not included or not explicit in the business plan).

Is the strategy set out in the business plan supported by key PCTs?

This question aims to ensure that there is commissioner support for the business plan and projected revenue streams post-merger.

The applicants will be required to: outline the local development 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 on page 22, 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 PCTs. For other income the assessment may be based on historical performance and market assessments, or a contractual basis, depending on the nature of the income.

Required submissions:

business plan.
Does the business plan fit with local and national service needs?

- This question aims to identify the degree to which the plans for merger 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.
- Applicant trusts will be required to provide evidence of the ways in which their business plan responds to local and national service needs.
- Monitor will engage in discussions with key stakeholders such as the SHAs 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 merger from the perspective of an integrated and consistent overview of the local health economy and all likely developments in it.
- In some cases, Monitor and/or the Department of Health will investigate whether the merger is likely to interfere significantly with patient access to clinical services, patient choice, or competition in the local health economy. The Department of Health will lead such an investigation if the merger involves an NHS trust, and Monitor will lead if the merger involves two NHS foundation trusts. However, both Monitor and the Department of Health will use similar criteria, agreed between them, which will be set out jointly by Monitor and the Department of Health on access, choice and competition (see footnote 2). The decision on whether to investigate these issues will be made on a case-by-case basis, but will be influenced by the views of the relevant SHAs and PCTs.
- Monitor will require a statement from the applicant trust boards that there has been no material change in the applicants’ risk management policies and processes since these assessments were made, or details of any significant changes made and confirmation that the processes have been implemented and are effective.

**Required submissions:**

- business plan.
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3.4 Schedule of services

The purpose of this schedule is to define the mandatory services that Monitor will require the proposed merged NHS foundation trust to provide under section 14 of the Act. The underlying philosophy is that the provision of services contracted or intended to be contracted by PCTs or third party education and training commissioners should be mandated in order to underpin the effective functioning of the commissioning systems. In particular, any planned differences from services currently provided by the applicant trusts should be clearly specified. Monitor will require applicant trusts to agree with all commissioning bodies, in advance of application, who they currently supply healthcare services to and what the mandatory services will be for the proposed merged trust. Applicants will need to submit evidence of agreement by the relevant commissioning bodies to the services to be provided by the proposed merged entity.

Applicants will need to complete and submit the following (see appendices 11a, 11b, 11c and 11d for further details):

- **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 PCTs and the applicants. Applicants should specify mandatory health services currently provided, and any planned changes to services post-merger. Any significant changes to currently provided mandatory services should have a clear and compelling rationale. Changes in the total amount of services provided by applicant trusts post-merger will be treated in a manner similar to a service variation. Applicant trusts should consult the separate document, the Variation of the Terms of Authorisation: Guidance for NHS Foundation Trusts, available on Monitor’s website, www.monitor-nhsft.gov.uk under Publications.

- **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 PCTs or other third parties. As with mandatory health services, any significant changes to currently provided education and training services should be indicated and have a clear and compelling rationale. The workbooks will form the basis for mandatory services. Where PCTs or third parties and the applicant are unable to reach agreement either to sign contracts or on their intention to sign contracts for particular services, those particular mandatory services may be authorised but the applicants would not be required in their Terms of Authorisation to provide them.

Monitor reserves the right to vary the goods and services which the proposed merged trust is required to provide in order to ensure the continuity of local service provision. These details will form schedules 2 and 3 to the Terms of Authorisation and must be provided as early as possible.
Mandatory health services workbook attachment 1: applicants must provide
a summary indicating which PCTs have signed contracts or are understood to be
going to sign contracts with the proposed merged trust. 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 31 agreements (with support separately identified for each party) and income
received from PCTs to fund any secondary commissioning undertaken by the trust.
Monitor will require applicant trusts to agree in advance of application with all relevant
commissioning bodies who they currently supply health care services to, what the
mandatory services will be for the proposed merged trust. For the purposes of
application for merger, ‘relevant commissioning bodies’ refers to all bodies with whom
either applicant trust currently has a contractual arrangement to provide mandatory
health care services (within the National Health Service in England).

3.5 Post-merger integration plan guidelines

3.5.1 Submissions

Applicants for merger should seek to ensure that Monitor’s assessment team will be able
to follow the post-merger integration plan from the current state of the two entities as
they exist today, to the final merged entity after it has completed all activities necessary
for consolidation. Monitor will examine the clarity of the plan with respect to financial,
clinical, organisational and governance aspects. In submitting their post-merger
integration plan, Monitor requires that applicant trusts will provide the following:

- Organisation chart of the proposed merged trust;
- Composition of proposed board of governors.
- Composition of board of directors of proposed merged trust including decisions
  on all key named posts (section 27(11) of the Act provides that the directors of the
  applicants for a merger may exercise the functions of the trust on its behalf until a
  board of directors is appointed in accordance with the new constitution of the merged
  entity).
- Relevant experience of directors in conducting successful mergers, if any.
- Clear plan to fill any necessary positions in the above which are vacant or will be
  vacant post-merger.
- Contact information for all persons specified in the organisation chart.
- Composition and relevant experience of the proposed integration team.

- Post-merger timeline;
- Timing of all key achievements post-merger (milestones).
- Projected dates of all management changes (or changing lines of authority), service
  reconfigurations, site closures, or any other post-merger events material to the
  financial plan or provision of clinical services.
- Timetable for service-line consolidation, laid out by individual service line. Monitor
  will not specify a format, but in general the timetable should provide:
  – a clear path from the current state of affairs to the future structure of the merged
    NHS foundation trust’s clinical services;
  – guidance as to the timing of costs, cost savings, and revenues specifically deriving
    from the post-merger program; and
  – a clear layout so that Monitor (or any other person reviewing the plan) can verify,
    after the merger, whether the post-merger integration is proceeding according to
    plan and on schedule.
Applying for a Merger involving an NHS Foundation Trust

Specifications of changes to clinical services appropriately cross-referenced with the business plan with evidence of appropriate consultation on the changes;

- Plan for how clinical services will be distributed post-merger, including a complete list of planned changes to clinical services from those currently offered by the applicant trusts.
- Timing and location of sites to be shut, moved, or where time of service provision will be affected (e.g. “hot” and “cold” sites).

Post-merger management team summary;

- This is a team specifically devoted to overseeing the post-merger integration plan and solving problems that arise, and is directly accountable for the results of the integration.
- Composition of post-merger management team with roles/responsibilities for delivery of the integration plan.
- Contact information for all members of the post-merger management team.

Post-merger integration risk management plan;

- Summary of key risks inherent in the plan including magnitude of risks, nature of risks, and their likelihood. Monitor will pay particular attention to risks to achievement of:
  - financial stability;
  - provision of mandatory services at agreed levels; and
  - achievement of NHS targets and national standards.
- Risk management strategy to mitigate risks identified in the post-merger integration, including fallback plan for accomplishing significant elements of the plan if, for example, the schedule slips, or in the case of unforeseen events that prevent achievement of key milestones.

Feasibility opinion on post-merger integration plan;

- The applicant trust boards will need to provide Monitor with a joint statement that the post-merger integration plan has been reviewed and that managements of merging trusts have given the merger plan due care and consideration in advance of the application to Monitor. A pro forma statement is shown in appendix 12.
- This joint board statement will need to be reviewed and reported on by an independent outside qualified professional adviser. The specific brief of the qualified accounting firm will be to provide a professional opinion on the joint board statement certifying that the management of each of the merging trusts has given the merger plan due care and consideration in advance of the application to Monitor. The letter should be addressed to the boards of the applicant trusts and Monitor. The letter should in substance be identical to the pro forma letter shown in appendix 13, and specifically refers to:
  - benefits to be derived from the merger including synergies, cost reductions, and increases in revenue;
  - feasibility of the proposed organisational structure and changes from the current state;
  - feasibility of the timeline; and
  - risk management strategy for all risks considered material by either the boards of applicant trusts or the qualified professional adviser.
If either applicant has had problems with service delivery in terms of meeting national standards or targets, or clinical performance, the proposed board of directors will have to propose a detailed action plan to remedy them. Monitor will reserve the right to ask for this plan to be externally validated by a competent body. Applicants will be required to fund the cost of this work themselves and should expect no financial assistance.

Resolution of accounting-related issues to include;

- Explanation of all relevant accounting-related issues in the proposed merger transaction and their proposed resolution.
- Advice obtained from outside accounting firms (where applicable).

Details of the proposed external and internal auditor of the new trust should be provided.

Monitor will use the information from all these submissions to determine whether the applicants’ post-merger integration plan meets the requirements for approval of the merger. Additional submissions may also be required.

The following section describes in more detail the questions that Monitor will consider in the merger assessment. An overview of these questions and the related submissions is provided in appendix 14.

Questions Monitor will ask in assessment

3.5.2 Do the applicant trusts have a feasible plan in place to quickly and effectively merge, upon approval?

Is the timing of all key actions to be taken post-merger well understood?

- The purpose of this question is to establish the timing of the post-merger plan and ensure that applicants have planned in advance for all important aspects of the post-merger integration.
- Trusts should submit a clear schedule indicating all of the major milestones in the post-merger integration plan, and when they will be accomplished relative to merger approval.
- Specific milestones are left to the applicants’ discretion but should include events such as management changes, closures or movements of sites, significant changes to service provision, and significant costs, cost savings or revenues incurred as a result of the merger.
- Monitor may require additional milestones to be added or additional information concerning the timing of the post-merger integration plan.

**Required submissions:**
post-merger timeline.
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Are roles and responsibilities for integration clear?

- This question aims to ensure that applicants have decided responsible parties for all important aspects of the post-merger integration plan in advance.
- If there are any remaining conflicts or leadership issues they should be clearly summarised, along with the plan to resolve them.
- Where possible, there should be plans to eliminate any significant management duplication within the two merging organisations. In cases where they will not be eliminated, a clear and compelling rationale should be stated.
- If there are essential positions in the new NHS foundation trust for which no person has yet been chosen, there should be an active search process in place to fill the position. Applicants should give details of these processes, and update Monitor regularly on their progress.

**Required submissions:**
organisation chart of proposed merged trust, post-merger management team summary.

What is the human resources strategy and vision for the proposed merged entity?

- The purpose of this question is for Monitor to assess the extent to which the managements of the applicant trusts have considered the implications of the merger for their staff. Specific areas for consideration include:
  - how resources and skills will be deployed in the new organisation;
  - whether the new organisation will operate from multiple sites or converge on a single site and implications of these decisions for staff;
  - whether there is a transition plan for staff to move from the pre-merger position to the post-merger position and what it looks like;
  - implications of the merger for service innovation and staff training; and
  - additional resource requirements for bedding down the merger.

**Required submissions:**
location decision and rationale, staff transition plan, plan for resourcing merger team.

What is the managements’ plan for communicating with their staff and other relevant parties before and during the merger approval process?

- For the merger process to work smoothly, it is important that the applicant trusts put robust arrangements in place for communicating to and keeping their staff and stakeholders updated on the proposals, timelines for different stages and implications for them of success/failure of the application.
- Communications will need to be tailored for different stakeholders, including staff, unions, customers, suppliers and the local communities.

**Required submissions:**
communication plan for staff and key stakeholders.
Is the post-merger configuration of services clear?

- The purpose of this question is for Monitor to assess the post-merger service configuration, and to ensure that decisions about service reconfigurations that will occur post-merger have already been made.
- The submitted plan should demonstrate continued provision of mandatory services for all patients currently served by the applicant trusts with levels of access well defined and in line with national targets.
- The appropriate clinical representative on the executive committee of the proposed new trust should submit a letter certifying that, to the best of his/her knowledge, there is no reason based in clinical practice to object to the service configuration set out in the business plan. This letter should be in substance identical to the pro forma letter shown in appendix 15.
- Although the staff of applicant trusts may not be covered by the Transfer of Undertakings (Protection of Employment) (TUPE) legislation\(^8\), applicants should assume TUPE-equivalent staff protections throughout the merger process, via the Department of Health.

Required submissions:
- business plan, revised (proposed) Schedules 2 and 3 for new trust authorisation,
- proposed medical director self-certification.

Is there an actionable plan in place to capture the benefits of the merger?

- This question aims to assess the depth of the existing plan to capture savings and/or synergies from the merger, and determine the feasibility of the plan. The benefits can be broadly divided into three categories, set out below:
  - **Cost benefits:** applicants should submit a summary of expected cost savings and synergies, in terms of value, timing, and key risks that may prevent achieving them. Assumptions should be clearly stated as Monitor will perform sensitivity analysis to determine the likelihood of capturing the cost savings under a plausible downside scenario. Persons responsible for capturing specific synergies should be clearly indicated, and their direct contact information included in the application.
  - **Revenue benefits:** applicants should submit a summary of the main sources of any revenue benefits expected as a result of the merger. These should be organised by the main sources of revenue (e.g. revenue-generating programmes). Assumptions should be clearly stated, as Monitor will perform sensitivity analysis to determine the likelihood of capturing the revenue benefits under a plausible downside scenario. Persons responsible for capturing specific revenue increases should be clearly indicated, and their direct contact information included in the application.

\(^8\) For more information on the Transfer of Undertakings (Protection of Employment) (TUPE) legislation, see http://www.dti.gov.uk/files/file20761.pdf
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Clinical benefits: applicants should set out how the merger will improve the quality of clinical care for the local communities that they serve including performance versus targets and standards set by the Department of Health. The plans should be specific, in that the specific benefits to individual service lines for patients served by the applicant trusts should be described. Furthermore, the plan should describe the source of the clinical benefits in a way that allows Monitor’s assessors to discuss the specifics with clinical staff of the applicant trusts. Supporting evidence for projected clinical improvements should be included wherever possible. Timing of key actions in the business plan to realise the clinical benefits (such as changes in service provision at a given site, site movement or site closure) should also be given. Responsible parties for all key actions in the plan should be indicated. Monitor will also wish to verify that the medical director and clinical directors of the new merged trust have already been chosen.

Applicant trusts will not necessarily be required to demonstrate all three of these types of benefits (cost, revenue, and clinical) from the merger for Monitor to approve the merger. Where appropriate, the business plan should be cross-referenced.

Required submissions:
feasibility opinion on post-merger integration plan (appendix 13), post-merger timeline, and organisation chart of proposed merged trust.

Have all relevant accounting issues been resolved?

- A number of accounting-related issues have the potential to be unclear, and leaving them unresolved could potentially interfere with effective execution of the post-merger integration plan. Applicants should therefore resolve these before making an application to Monitor. These include (but are not limited to):
  - treatment of accumulated deficits;
  - accounting for reserves and public dividend capital of the new NHS foundation trust; and
  - use of merger, acquisition or fresh-start accounting to account for the merger transaction.
- Applicants should consult an outside professional accounting adviser where necessary to resolve these and any other accounting issues that arise as a result of the merger.
- Applicants should also determine who the external auditor for the new trusts will be in advance of the application.

Required submissions: resolution of accounting-related issues.
3.5.3 Are potential risks inherent in the merger well understood and is there a plan in place to manage them?

Are the principal risks to execution of the post-merger integration strategy understood?

- The purpose of this question is to ensure that applicants for a merger have carefully considered the risks inherent in the merger for the proposed merged entity.
- Applicant trusts should submit a list of the principal risks to the post-merger integration plan, specifying the nature of the risks, and their potential impact and likelihood. The external feasibility opinion will be considered by Monitor when assessing whether the applicants have taken due care and consideration in assessing the potential risks of the merger.

Required submissions:
- post-merger integration risk management plan, feasibility opinion on post-merger integration plan (appendix 13), post-merger management team summary.

What is the strategy for mitigating each of the principal risks, and who is responsible for each specific aspect of risk management?

- Applicants should submit a clear strategy for mitigating each of the specific risks outlined above. It should be clear how effective the risk mitigation strategies can be – i.e. in a plausible downside scenario, to what extent would the strategies the applicants outline mitigate the specific risks?
- Persons responsible for specific aspects of the risk management strategy should be clearly indicated.

The following types of risks should be particularly considered:
- financial and commercial risk: strategic and financial history and plans, operations, organisation and management capabilities, existing and future liabilities;
- legal risk: constitution, legal entities, outstanding and pending litigation, employment contracts and arrangements; and
- clinical risk: in-house clinical capabilities, commissioning status of clinical services, status of facilities required for provision of services, any relevant Healthcare Commission reports.

- Applicant trusts may wish to perform due diligence on the other party in advance of their application to Monitor. Should either applicant trust do this, they should provide copies of the due diligence reports to Monitor.

- The independent assessment of the joint board statement (appendix 13) will be considered by Monitor when assessing whether the applicants have taken due care and consideration in assessing the potential risks of the merger.

Required submissions:
- post-merger integration risk management plan, feasibility opinion on post-merger integration plan (appendix 13), post-merger management team summary, any available due diligence reports.
What will the integration cost be and how will it be financed?

- This question aims to assess the magnitude of costs associated with the merger and to determine what the sources of funding will be.
- The amount of costs expected to complete the merger should be clearly specified, as well as the assumptions used to calculate them. Timing of the costs should be included. Monitor will perform its own analysis on these costs to assess the risks to working capital as well as the long term financial projections.
- If the applicants plan to fund the merger solely from operating cash flow, these costs should be clearly indicated in the working capital review.
- If outside sources of capital will be used to fund the costs of the merger in whole or in part, they should be clearly specified. Monitor will require independent confirmation that such funding is available.
- Monitor would likely view as unrealistic a proposal that the costs of merger could be funded via cost savings, synergies or additional revenues realised as a result of the merger. Experience has shown that costs of a merger are typically incurred well before they can be recouped via any financial benefits of the merger, and therefore must be funded directly.

**Required submissions:**
- post-merger integration risk management plan, feasibility opinion on post-merger integration plan, working capital review, long term financial projections.

3.4.4 Does the proposed merged trust have the organisational capacity to carry out the post-merger integration?

**Is the composition of the senior management of the proposed merged trust clear?**

- The purpose of this question is to ensure that composition of key management posts in the new merged trust has been agreed beforehand.
- Trusts should submit a complete organisational diagram for the composition of the board of governors (just prior to authorisation), the composition of the board of directors and decisions on key named posts for the proposed merged trust. Contact information should be included.
- In cases where any of the above positions would become redundant between the two applicant trusts, Monitor expects that the choice of individuals to fill the relevant positions will be made before the application is made.

**Required submissions:**
- organisation chart of the board of directors and board of governors of the proposed merged trust.
Will the new board of directors be capable of effectively discharging its duties on behalf of the new merged trust?

- The purpose of this question is to assess the qualifications of the board of directors of the proposed merged trust. Monitor will consider the composition of the board of directors, as well as the specific skill set of the board members themselves.
- In deciding on the composition of the new board, consideration should be given to the importance of ensuring continuity of relations with the clinicians, local authorities, voluntary bodies and others and the value of these relations in ensuring effective management of the proposed merged entity. The new board of directors should also be competent to supervise the finance and governance aspects of the combined entity.
- As the application for a merger is a joint one under the Act, the composition of the new board would need to be mutually agreed between the boards of directors of the two applicant trusts. The new board should be sufficiently mixed to align its interests with those of the new NHS foundation trust, rather than those of either applicant trust. Preferably the new board of directors will also have representation from outside either applicant to reflect the need for a different mix of skills to bed down and run a successful merged entity.
- The qualifications of the board members for the new NHS foundation trust should be specified. The composition and qualifications of the new non-executive directors must be such that they can challenge the management team when necessary.

Required submissions:
- organisation chart of proposed merged trust, curriculum vitae of proposed board members and details of professional advisers and their roles.

Do the applicant trusts' management and proposed board of directors have a track record of successful mergers?

- This question aims to assess the level of experience with mergers in the management and board of the proposed merged trust.
- Trusts should submit the relevant experience of the proposed management team and board of directors, particularly regarding experience with successful mergers of NHS trusts. However, experience with successful mergers outside NHS trusts would also be well regarded.
- Trusts should provide details of any professional advisers that the management team and/or board of directors intend to use for providing support on management of the principal risks of post-merger integration. Trusts should inform Monitor of the intended scope and depth of their intended engagements with these advisers and update Monitor of any changes.
- Monitor will consider the relevant experience of the management team and their advisers (if any) in deciding whether to approve the merger application, and also in setting the risk rating of the new merged NHS foundation trust.

Required submissions:
- organisation chart of proposed merged trust, curriculum vitae of proposed board members and details of professional advisers and their roles.
4. Merger applications and contacts

4.1 Applications should be sent in hard copy (three copies), to Monitor (see 4.2 below). A CD of submissions should be provided with the final submission.

The timetable for the merger assessment process will be provided to applicants in a separate letter.

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, commissioners and wider stakeholder groups. During this process the proposed board for the merged entity will be asked to present their future plans to Monitor’s Board.

Appendix 3 lists all submissions that are required, while appendices 4, 7, 10 and 14 list submissions by assessment question.

4.2 All submissions should be sent to:
Merger Applications Team
Monitor
4 Matthew Parker Street
London SW1H 9NL
**Summary of appendices**

| Appendix 1: | glossary of terms and abbreviations |
| Appendix 2: | sections of the Act |
| Appendix 3: | overview of submissions |
| Appendix 4: | governance issue analysis – legally constituted? |
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| Appendix 11a: | schedule of services – mandatory health services |
| Appendix 11b: | schedule of services – Mandatory Health Services: Commissioner Support |
| Appendix 11c: | schedule of services – mandatory education and training services |
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| Appendix 12: | pro forma joint board statement |
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### Appendix 1: Glossary of Terms and Abbreviations

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<th>Term</th>
<th>Definition</th>
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<tr>
<td>DH</td>
<td>Department of Health (<a href="http://www.dh.gov.uk">www.dh.gov.uk</a>)</td>
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<tr>
<td>Monitor</td>
<td>Monitor is the Independent Regulator of NHS foundation trusts.</td>
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<tr>
<td>NHS foundation trust</td>
<td>NHS foundation trusts are new entities created under the Health and Social Care (Community Health and Standards) Act, 2003.</td>
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<tr>
<td>OSC</td>
<td>Overview and scrutiny committees of local authorities inquire into all &quot;matters of local concern&quot;, including the NHS, e.g. health inequalities and access to services. NHS bodies must consult with overview and scrutiny committees (OSCs) before making any material changes to service offerings, and must provide the OSCs with any information requested.</td>
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<tr>
<td>PCT</td>
<td>Primary care trust. There are roughly 300 PCTs in England (reducing to c.150 by March 2007). PCTs have a dual role of coordinating provision of primary care through GP networks and commissioning secondary services from trusts.</td>
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<tr>
<td>PFI</td>
<td>Private finance initiative is a financing method in which a public body (i.e. a trust) contracts with a private sector consortium through a special purpose vehicle. Contracts have a capital expenditure and a servicing component.</td>
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<tr>
<td>Pre-approval</td>
<td>Pre-approval is a stage in Monitor’s review of a merger application. It is a notification to applicant trusts that an initial inspection of materials submitted appears to meet the financial, governance and legal criteria for NHS foundation trust status and also includes consideration of SHA and PCT views on access, choice and competition issues.</td>
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<td><strong>Service line</strong></td>
<td><em>Service line</em> refers to a particular area of clinical services within an NHS trust or NHS foundation trust, for example, oncology or pediatrics.</td>
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<td>SHA</td>
<td>The NHS is divided geographically into ten <strong>strategic health authorities</strong> (SHAs), whose role is primarily to provide strategic leadership, develop organisations and the workforce and ensure local health systems operate effectively and deliver improved performance.</td>
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<tr>
<td>The Act</td>
<td>The Health and Social Care (Community Health and Standards) Act 2003</td>
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<td>ToA</td>
<td><strong>Terms of Authorisation</strong> refers to the mandatory conditions of authorisation with which foundation trusts must comply (see also <a href="http://www.monitor-nhsft.gov.uk">www.monitor-nhsft.gov.uk</a>).</td>
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Applying for a Merger involving an NHS Foundation Trust

Appendix 2: sections of the Act

27. Mergers

(1) An application may be made jointly by
   (a) an NHS foundation trust, and
   (b) another NHS foundation trust or an NHS trust,
   to the regulator for authorisation of the dissolution of the trusts and the transfer of some or all of their property and liabilities to a new NHS foundation trust established under this section.

(2) The application must
   (a) be supported by the Secretary of State if one of the parties to it is an NHS trust,
   (b) specify the property and liabilities proposed to be transferred to the new NHS foundation trust,
   (c) describe the goods and services which it is proposed should be provided by the new trust, and
   (d) be accompanied by a copy of the proposed constitution of the new trust; and must give any further information which the regulator requires the applicants to give.

(3) The applicants may modify the application with the agreement of the regulator at any time before authorisation is given under this section.

(4) The regulator may
   (a) issue a certificate incorporating the directors of the applicants as a public benefit corporation, and
   (b) give an authorisation under this section to the corporation to become an NHS foundation trust, if the regulator is satisfied as to the following matters.

(5) The matters are that
   (a) the constitution of the new trust will be in accordance with Schedule 1 and will otherwise be appropriate,
   (b) the applicant has taken steps to secure that (taken as a whole) the actual membership of any public constituency, and (if there is one) of the patients' constituency, will be representative of those eligible for such membership,
   (c) the new trust will be able to provide the goods and services which the authorisation is to require it to provide, and
   (d) any other requirements which the regulator considers appropriate are met.

(6) In deciding whether it is satisfied as to the matters referred to in subsection (5)(c), the regulator is to consider (among other things)
   (a) any report or recommendation in respect of either of the applicants made by the Commission for Healthcare Audit and Inspection,
   (b) the financial position of the applicants.

(7) The applicants must consult about the application in accordance with regulations.
(8) In the course of the consultation the applicants must seek the views of –
   (a) any patients’ forum for an applicant,
   (b) the staff employed by the applicants,
   (c) individuals who live in any area specified in the proposed constitution as the area for a public constituency,
   (d) any local authority that would be authorised by the proposed constitution to appoint a member of the board of governors,
   (e) if the proposed constitution provides for a patients’ constituency, individuals who would be able to apply to become members of that constituency,
   (f) any persons prescribed by regulations.

(9) The regulator may not give an authorisation under this section unless it is satisfied that the applicants have complied with the regulations.

(10) The certificate is conclusive evidence of incorporation; and the authorisation is conclusive evidence that the corporation is an NHS foundation trust.

(11) On an authorisation being given under this section, the proposed constitution of the NHS foundation trust has effect, but the directors of the applicants may exercise the functions of the trust on its behalf until a board of directors is appointed in accordance with the constitution.

28. Section 27: supplementary
(1) Where an authorisation is given under section 27, the regulator is to specify the property and liabilities to be transferred to the new NHS foundation trust.

(2) Where such an authorisation is given, the Secretary of State is to make an order –
   (a) dissolving the trusts in question, and
   (b) transferring, or providing for the transfer of, the property and liabilities specified by the regulator to the new NHS foundation trust.

(3) The order may:
   transfer, or provide for the transfer of, any of the remaining property or liabilities to the persons mentioned in section 25(3),
   include provisions corresponding to those of Schedule 3.

(4) Where one of the parties to an application under section 27 is an NHS trust, the powers conferred on the Secretary of State by part 4 of Schedule 2 to the 1990 Act are not exercisable in relation to the trust.

(5) Section 6 (4) applies to an authorisation under section 27 as it does in relation to an authorisation under that section.
## Appendix 3: overview of submissions

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<td>- Combined service development strategy</td>
</tr>
<tr>
<td></td>
<td>- Revised (proposed) schedules 2 and 3 for new trust authorisation</td>
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<td>- Proposed clinical representative self-certification</td>
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<td></td>
<td>- Working capital review (same as in business plan)</td>
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<tr>
<td></td>
<td>- Long term financial projections (same as in business plan)</td>
</tr>
</tbody>
</table>
Appendix 4: governance issue analysis – legally constituted?

Is the proposed merged entity legally constituted?

- Is the proposed constitution compliant with schedule 1 of the Act?
  - Constitution

- Is the proposed constitution otherwise appropriate?
  - Constitution

- Has the statutory consultation been held?
  - Summary of statutory consultation (including issues raised and the applicants’ response)

- Have new members been recruited and have elections been held for the provisional board of governors?
  - Details of electoral process and report on initial elections
Applying for a Merger involving
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Appendix 5: appropriateness of the constitution
(matters over and above compliance with Schedule 1)

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 Act to establish lesser categories of membership, such as associate membership.

3. It is for the applicant trusts to consider whether they require 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 1 of 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 proposed merged 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, including 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.
Appendix 6 : Board statements

Risk and performance management
The board of directors is required to confirm that:

- Issues and concerns raised by external audit and external assessment groups (including the CNST 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 measurement and risk management processes are in place to deliver the business plan;
- A Statement of Internal Control (SIC) is in place, and [insert names of applicant trusts] are compliant with the risk management and assurance framework requirements that support the SIC pursuant to most up to date guidance from HM Treasury (see http://www.hm-treasury.gov.uk);
- The board is satisfied that plans are in place to ensure that all core national healthcare targets and standards are met going forwards; and
- All key risks to compliance with the authorisation have been identified and addressed

Board roles, structures and capacity
The board of directors is required to confirm that:

- 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 programs in place ensure that the non-executive directors have appropriate experience and skills;
- The management team have the capability and experience necessary to deliver the business plan; and
- The management structure in place is adequate to deliver the proposed merged trust’s strategy.

Signed for and on behalf of the boards of directors, [both applicant trusts]
Title: Date: Trust:
Title: Date: Trust:
Applying for a Merger involving an NHS Foundation Trust

Appendix 7: Governance issue analysis – well governed

Submission

- Proposed membership strategy
- Update on implementation of membership strategy
- Proposed constitution
- Proposed governance arrangements and rationale
- Electoral rules and regulations
- Account of current electoral process
- Update on elections
- Register of proposed governors’ interests
- Register of proposed directors’ interests
- Proposed constitution
- Governance arrangements and rationale (with appropriate commentary)
- Self-certification on management capability and experience; curriculum vitae and/or summary of relevant experience of proposed management team
- Self-certification on selection process for non-executive directors
- Self-certification on management structures
- Business plan
- Self-certification on planning and risk management
- Direct evidence on risk and performance management
- Reports and associated action plans from inspectorates
Appendix 8: definition of private patient income

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

- income received from PCTs and specialist PCTs 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 agreements; and
- should exclude income for asset impairments (non-patient related).
Applying for a Merger involving an NHS Foundation Trust

Appendix 9: pro forma joint board statement confirming sufficiency of working capital

Private and confidential

Monitor – Independent Regulator of NHS foundation trusts

[Date]

Dear Sirs

[NHS foundation trust]

Working capital

In connection with the application of [Names of applicant trusts] to merge and form a new NHS foundation trust, the boards of directors of both applicant trusts have reviewed the proposed merged trust's future working capital requirements from [date] to [1 year from date]. The results of this review are set out in the attached board memorandum dated [date ] which has been prepared after due and careful enquiry.

In the opinion of the boards of directors of both applicant trusts, (taking into account the proposed merged trust's new working capital facilities), the working capital available to the proposed merged trust is sufficient for its present requirements, that is at least the 12 months from [date]

Financial reporting procedures

The boards of directors of [names of applicant trusts] confirm that they have established procedures for the proposed merged trust which provide a reasonable basis for them to reach proper judgement as to the financial position and prospects of the proposed merged trust.

The basis of the boards of directors’ confirmation is set out in the attached board memorandum dated [date]. The boards of directors confirm that the board of directors of the proposed new merged trust will continue to maintain procedures at or exceeding this level of quality subsequent to [date].

Yours faithfully

For and on behalf of the boards of directors, [both applicant trusts]
Appendix 10: business plan issue analysis

Is the business plan financially viable and sustainable?

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

- Are the key assumptions realistic (e.g., the impact of payment by results, choice and agenda for change)?
  - Business plan

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

- What risks arise from the trusts’ existing partnerships and joint ventures.
  - Business plan

Is the business plan internally consistent

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

- Are the capital assumptions consistent with the projected service activity?
  - Business plan

- Is the implementation plan clear and consistent (e.g., cost improvement plans, post-merger integration plans, recruitment and borrowing)?
  - Business plan

- Does the plan include the mandatory services?
  - Schedule of services

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

- Are the private patient income assumptions consistent with the cap?
  - Business plan

- Is the strategy, as set out in the business plan, supported by key PCTs?
  - Business plan

- Does the plan fit with local and national service needs?
  - Business plan

Is the business plan financially viable and sustainable?

- Does the business plan provide a level of activity and mix of services consistent with patient needs and the requirements of the Act?
  - Business plan

- Are the private patient income assumptions consistent with the cap?
  - Business plan

- Is the strategy, as set out in the business plan, supported by key PCTs?
  - Business plan

- Does the plan fit with local and national service needs?
  - Business plan

Submission

- Business plan

- Business plan

- Long term financial projections
  - Working capital review

- Business plan

- Long term financial projections
  - Working capital review

- Business plan

- Long term financial projections
  - Working capital review

- Business plan

- Summary of public consultation outcomes

- Schedule of services

- Business plan

- Business plan

- Details of private patient income assumptions

- Business plan

- Business plan
Applying for a Merger involving an NHS Foundation Trust

Appendix 11a:
schedule of services – mandatory health services

- 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. Each sheet represents a different activity type (e.g., day case, emergency in-patient). On each worksheet, services have been listed by specialty code.

- On each activity type worksheet, therefore:
  - The applicants must list all key PCTs. These are defined as commissioners expected to account for 5% or more of current year income. They may then group the others in the ‘Other Commissioners’ column.
  - The applicants must specify the activity volume, by national specialty code, contracted by each commissioner (or understood to be going to be contracted); the aggregate amount contracted (or understood to be going to be contracted) by ‘Other Commissioners’ should also be specified.

- The applicants are provided with a set of worksheets called ‘Other services’. On these worksheets, applicants should include those activity types not captured on the previous worksheets (i.e., not captured under in-patient, day case, out-patient or critical care) but for which services are still commissioned by NHS specialty code. Examples might include direct access or programs of care.

- The reason that more than one ‘Other services’ worksheet is provided is so that the applicants can divide activity depending on the currency in which it is recorded. The applicants should therefore indicate at the top of each sheet which currency is being used.

- Where location of service delivery is a material issue and is specified in the contract between the applicants and PCTs, the applicants will need to specify volumes by location.

- The applicants are provided with two sets of worksheets. The applicants must fill in a set of worksheets per location. Where there are more than two relevant locations, the applicants are expected to copy the sheets and create additional sets as required.
Appendix 11b: 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 as a consequence of the contractual commitments entered into, or expected to be entered into, between the applicant trusts and their 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. In this attachment:

- The applicants must list all key commissioners. These are defined as commissioners expected to account for 5% or more of the current year’s income. They may then group the others in the ‘Other commissioners’ row.
- For each commissioner the applicants 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 applicants 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.

Appendix 11c: 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 applicants will need to specify:

- commissioning body (where appropriate) or third party;
- accrediting educational body;
- length of contract;
- expiry date of contract;
- type of student group for which the training is provided;
- type of training;
- number of students; and
- value of contract.
Appendix 11d: schedule of services – non-mandatory services

The applicants 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 that they are currently providing, including:

- mandatory health services;
- non-mandatory health services; and
- education and training services provided to third parties.

The applicants will be authorised to provide:

- accommodation and other facilities; and
- 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 12: pro forma joint board statement

Private and confidential

Monitor – Independent Regulator of NHS Foundation Trusts

[date]

[NHS foundation trust]

Post-merger integration plan

In connection with the application of [names of applicant trusts] for merger the boards of directors have reviewed the post-merger integration plan. This plan has been prepared in accordance with Monitor’s Merger Guide for Applicants and after due care and consideration.

Yours faithfully

For and on behalf of the boards of directors [both applicant trusts]
Dear Sirs

[Proposed merged NHS foundation trust]

We refer to the statement made by the directors of [ ] to the effect that [quote directors’ statement on the merger plan]

The statement, together with the basis of belief of the directors for making the statement, sources of information supporting the statement and the directors’ analysis and explanation of the underlying constituent elements, is set out in a memorandum prepared by the directors of both applicant trusts.

We have discussed the statement together with the underlying plans with senior management. We have also agreed the financial and other supporting data in the report to supporting information where appropriate and where such information has been made available to us.

We do not express any opinion as to the achievability of the benefits identified by the directors in the statement. Because of the significant changes from the new merged trust’s operations expected to flow from the merger and because the statement relates to the future, the actual merger benefits achieved are likely to be different from those anticipated in the statement and the differences may be material.

We draw your attention to the assumptions set out in the merger plan and to the discussion of the following, with attention to the degree to which we have been able to verify the information on which the following are based:

- benefits to be derived from the merger including synergies, cost reductions, and increases in revenue;
- feasibility of the proposed organisational structure and changes from the current state;
- feasibility of the timeline;
- risk management strategy; and
- plan to resolve any service delivery problems.

On the basis of the foregoing, we report that in our opinion the directors of both applicant trusts have made the statement, in the form and context in which it is made, with due care and consideration.

Yours faithfully

For and on behalf of the [independent outside qualified professional adviser]
Appendix 14: post-merger integration plan issue analysis

Is the timing of all key actions to be taken post-merger well understood?

Are roles and responsibilities clear?

What is the HR strategy and vision for the proposed merged entity?

What is management’s and other parties plan for communicating with their staff before and during the merger approval process?

Is the post-merger configuration of services clear?

Is there an actionable plan in place to capture the benefits of the merger?

Have all relevant accounting issues been resolved?

Are the principal risks to execution of the post-merger integration strategy understood?

What is the strategy for mitigating each of the principal risks, and who is responsible for each specific aspect of risk management?

What will be the integration cost and how will it be financed?

Is the composition of the senior management of the proposed merged trust clear?

Will the new board of directors be capable of effectively discharging its duties on behalf of the new merged trust?

Do the applicant trusts’ management and proposed board of directors have a track record of successful mergers?

Do the applicant trusts have a feasible plan in place to quickly and effectively merge, upon approval?

Are potential risks inherent in the merger well understood and is there a plan in place to manage them?

Does the proposed merged trust have the organisational capacity to carry out the post-merger integration?

Submission

- Post-merger timeline
- Organisation chart of proposed merged trust
- Post-merger management team summary
- Location decision and rationale
- Staff transition plan
- Plan for resourcing merger team
- Communication plan for staff and key stakeholders
- Business plan
- Revised (proposed) schedules 2 and 3 for new trust authorisation
- Proposed medical director self-certification
- Feasibility opinion on post-merger integration plan
- Post-merger timeline
- Organisation chart of proposed merged trust
- Resolution of accounting-related issues
- Post-merger integration risk management plan
- Feasibility opinion on post-merger integration plan
- Post-merger management team summary
- Any available due diligence reports
- Post-merger integration risk management plan
- Feasibility opinion on post-merger integration plan
- Working capital review
- Long term financial projections
- Organisation chart of the board of directors and board of governors of the proposed merged trust
- Organisation chart of proposed merged trust
- Curriculum vitae of proposed board members
- Details of professional advisers and their roles
Applying for a Merger involving an NHS Foundation Trust

Appendix 15:
pro forma opinion on the service reconfiguration

Private and confidential

Monitor – Independent Regulator of NHS Foundation Trusts

[Date]

Dear Sirs

[Applicant trusts]

In connection with the application of [applicant trusts] to merge and form a new NHS foundation trust, I have reviewed the business plan. The results of this review are set out in the attached memorandum dated [date] which has been prepared after due and careful enquiry.

In my opinion, taking into account the business plan and all changes to the clinical service configurations which are proposed to be made post-merger, there is no reason based in clinical practice to object to the service configuration set out in the business plan.

Yours faithfully

[proposed medical director of new merged trust]