




SIGNIFICANT TRANSACTIONS POLICY

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Executive director	Executive Director of Finance	
Policy lead	Associate Director of Corporate Governance	
Policy author (if different from above)		
Exec Sign off Signature (electronic)		
Disclosable under Freedom of Information Act 2000	Yes	

Policy context

- The Significant Transactions Policy sets out how the Trust will ensure that it carries out formal processes in relation to Significant Transactions and adheres to relevant legislative and regulatory frameworks. This process includes the identification of potential transactions, assessment of whether a transaction is 'significant', internal and external due diligence processes, reporting to NHS England and approval of a transaction.
- The Policy makes sure that all staff and the Council of Governors understand their obligations and responsibilities in relation to Significant Transactions. It also makes sure that the Council of Governors receive adequate training and an appropriate level of information in order to enable them to discharge their responsibilities.

Policy requirement (see Section 2)

- Any transaction that may be classed as significant must be assessed against a range of monetary and non-monetary criteria to determine whether it is significant. This must be reviewed by the Executive Director of Finance, Executive Team and the Finance, Performance and Productivity Committee (Board of Directors if above delegated limits) as well as endorsed by the Council of Governors.
- Internal due diligence processes must be carried out on all Significant Transactions. Some transactions may also require reporting to NHS England or external due diligence, which must be assessed on a case-by-case basis.
- The Council of Governors has a statutory responsibility to endorse the transaction by considering whether the Board of Directors has been thorough and comprehensive in reaching its proposal and appropriately obtained and considered the interests of members and the public as part of the decision-making process.
- This Policy is aligned to the NSHE guidance on Significant Transactions `Assuring and supporting complex change Statutory transactions, including mergers and acquisitions` (2022).

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1 Introduction

This policy is underpinned by the Trust's values of compassionate, inclusive and committed.

1.1 Rationale (why):

Entering into a Significant Transaction (see Sections 8 Glossary and Appendix 6 for definition) may be necessary to contribute to the delivery of our vision and strategic objectives.

NHS Foundation Trusts have specific responsibilities as set out in legislative and regulatory frameworks around the assessment and approval of Significant Transactions. In particular:

- The NHS Act 2006, as amended by the Health and Social Care Act 2012, requires a Foundation Trust to seek the endorsement of its Council of Governors if it proposes to enter into a Significant Transaction.
- NHS England recent published guidance to help support Trusts including FTs undertaking statutory transactions to ensure that such proposed transactions are the right solutions to the issues they wish to address and that the intended benefits will be delivered.
- The NHSE Guidance entitled "*Assuring and supporting complex change Statutory transactions, including mergers and acquisitions*" published October 2022 draws inspiration from the Health and Care Act 2022 and supersedes previous such guidance that had been issued by NHS Improvement.
- NHSE in its guidance insists that "all transaction proposals will need to have patient and population benefits at their core and be underpinned by detailed plans for delivering those benefits".

The Health and Care Act 2022 contains a number of provisions relevant to this guidance which include: -

- transfer of legal powers in relation to transaction approval from Monitor and the Trust Development Authority to NHS England.
- introduction of statutory transfer schemes between trusts (new section 69A of the NHS Act 2006).
- clarification of the FT dissolution power.
- requirement for the Secretary of State for Health and Social Care to approve all transactions, including those only involving foundation trusts.
- exemption of transactions between trusts from review by the Competition and Markets Authority (CMA).

The Trust has made a conscious decision not to define a Significant Transaction in its Constitution but to hold such a definition in this policy for the purposes of section 51A of the 2006 Act (Significant Transactions) in view of facilitating the ability to easily capture any future changes/guidance that may be made by NHSE. The Executive Director of Finance (or their deputy) will in the first instance review to determine if a transaction meets the definition of a `Significant Transaction` and recommend appropriately to the Executive Team via ET for a management decision. This will be done on a case-by-case basis and if ET agrees that the transaction meets the threshold of a `Significant Transaction`, the process as outlined in this

policy will be followed via the Board or the FPP (if applicable) and then the Council of Governors for approval*¹ (endorsement).

The Significant Transactions Policy will ensure that:

- A defined process is in place for identifying transactions and determining whether or not a transaction is deemed to be classed as significant;
- Robust due diligence processes are in place for assessing a Significant Transaction and evaluating risks;
- The Board of Directors and the Council of Governors have assurance that a robust and consistent approach is in place to ensure that sound business decisions are made based on a full impact and risk assessment;
- A clear process is in place setting out what information Governors will be given, at what point in the process Governors will be asked to agree the transaction, and how the views of members will be sought, and stakeholders kept informed.
- Appropriate approvals of the Significant Transaction are obtained in line with legislation and guidance;
- Significant Transactions are reported to NHS England, in line with requirements; and
- All staff involved in Significant Transactions are aware of the process and their roles and responsibilities.

1.2 Scope (when, where and who):

This policy will apply to all transactions that could be classed as significant. Examples of such transactions include:

- Significant capital expenditure
- Winning a new contract to provide services (including new care models and provider collaboratives).
- Losing an existing contract to provide services.
- A significant change to function/ responsibilities.
- Projects funded through PFI.
- Joint ventures.
- Mergers and acquisitions.
- Dissolutions and separations.
- Investments and divestments.

Each transaction must be assessed on a case-by-case basis as to whether it is deemed to be significant or not. This process is set out in detail in Section 3.3.

This Policy will be followed by all staff who are involved in such a transaction e.g. through due diligence or gathering of evidence, as well as appropriate approval. Responsibilities are set out in Section 4.

¹ By 'approval' means the Council of Governors is satisfied (assured) that the Board has been thorough and comprehensive in reaching its decision about the transaction.

1.3 Principles (Beliefs)

NHS organisations are increasingly planning transactions to bring increased opportunities to achieve strategic objectives, reorganise or respond to changes in the financial climate or local health economy. This is driven by a wider strategy of innovation and growth, as well as efforts to address clinical and financial issues that might affect patient care.

Significant Transactions are generally complex and carry a detail of risk, and therefore will be subject to high scrutiny, transparency and follow due process.

It is important that entering into a Significant Transaction does not damage either our reputation, sustainability or reduce our ability to deliver our existing business.

Legislation sets out specific responsibilities for our Council of Governors to be assured that the Board of Directors have carried out robust processes to assess a Significant Transaction and has considered the views of members and other stakeholders.

2 The Policy

- 2.1 All transactions that have been identified as potentially being significant must be notified to the Executive Director of Finance who will review to confirm agreement that it will be further assessed.
- 2.2 Each such transaction must be assessed on a case-by-case basis, using a range of quantitative and qualitative decision criteria, to decide whether it is classed as significant.
- 2.3 The assessment of whether a transaction is significant must be considered by the Executive Team and Finance, Performance and Productivity Committee (Board of Directors if above delegated limits of the FPP) and endorsed by the Council of Governors.
- 2.4 Internal due diligence processes must be carried out for all Significant Transactions. This will be tailored depending on the nature of the transaction. A summary report will be endorsed and recommended to the Board by the Finance, Performance and Productivity Committee, and where required, a private session of the Board of Directors.
- 2.5 The Executive Director of Finance, in consultation with the Executive Team, must assess the need for external due diligence depending on the nature, complexity and risks of the transaction.
- 2.6 A Due Diligence Report containing a summary of findings must be reviewed and approved by the Finance, Performance and Productivity Committee (or endorsed and recommended to the Board of Directors if it exceeds its delegated limits).
- 2.7 The Council of Governors has a statutory duty to hold the non-executive directors (individually and collectively) to account for the performance of the Board of Directors, and to represent the interests of the NHS foundation trust members and the public.
- 2.8 In accordance with the NHS Act 2012:
 - For statutory transactions (i.e. mergers, acquisitions, separations or dissolutions) more than half of the members of the full Council of Governors must endorse the application. This means more than half of the total number of governors, not just those in attendance at the meeting where the decision is taken.
 - For other transactions more than half of the members of the full Council of

Governors voting need to endorse the Trust entering into any Significant Transaction. This means more than half of the governors who are in attendance at the meeting and who vote at that meeting.

- 2.9 In this context, 'endorse' means the Council of Governors need to satisfy themselves that the Board of Directors has been thorough and comprehensive in reaching its proposal and appropriately considered the interests of members and the public as part of the decision-making process.
- 2.10 The Board of Directors has the authority to decide whether a Significant Transaction will proceed.
- 2.11 Where a transaction fits within NHS England's thresholds of a Material or a Significant Transaction, this must be reported to them as early in the assessment stage as possible, and their processes for self-certification or detailed review followed.
- 2.12 Once a final decision has been taken on the proposed Significant Transaction and it is no longer deemed as confidential, the Trust will communicate the transaction to relevant stakeholders.
- 2.13 It is advisable to present a Significant Transaction to the Council of Governors for endorsement once the Board has completed its due diligence thoroughly and comprehensively and have approved the transaction.
- 2.14 The Board might consider it helpful to give the Council of Governors insight into future significant transactions. This may enable a better understanding of the transaction and its benefits. It must be made clear to the Council that it is an opportunity for engagement and to check if there is anything in particular, they would wish to be considered in carrying out the assessment. The outcome of any interaction with the CoG should not be considered 'endorsement' as the significant transaction will need to formally come to the CoG for endorsement once its has been approved by the Board. The Chair of the Trust will determine how best to manage such discussions.

3 The Procedure

- 3.1 Appendix 2 contains a flowchart of the Significant Transaction process. There are five stages which are set out in more detail below:
 - Identification of a potential Significant Transaction.
 - Assessment of whether a transaction is significant.
 - Due diligence processes to decide whether or not to proceed.
 - Approval of the transaction.
 - Communication with members and wider stakeholders.
- 3.2 The Council of Governors has a role to play throughout the process and Appendix 3 sets out a summary of its responsibilities, including when it will expect to be involved and what information it will expect to receive
- 3.3 Identification of transactions
 - 3.3.1 A transaction will be flagged as being something that is potentially significant through the following means:
 - Capital expenditure – by the Executive Director of Finance, ET and Finance, Performance and Productivity Committee for endorsement and recommendation to

the Board of Directors.

- Winning a new Contract – in the Tender Assessment Proforma which is approved by the Executive Team.
- Losing a Contract – either through the Tender Assessment Proforma (if subject to tender) or through the Contracting Team when commissioner intentions are received, or notice is served on a Contract.
- A significant change to function/ responsibilities - by the Finance, Performance and Productivity (or Board of Directors if it exceeds delegated authority).
- Projects funded through PFI – by the Executive Director of Finance, ET and Finance, Performance and Productivity (or endorsement and recommendation to the Board of Directors if it exceeds delegated authority).
- Joint ventures - by the Executive Director of Finance, ET and Finance, Performance and Productivity (or endorsement and recommendation to the Board of Directors if it exceeds delegated authority).
- Mergers and acquisitions – always deemed significant.
- Dissolutions and separations – always deemed significant.
- Investments or divestments – by the Executive Director of Finance, ET and Finance, Performance and Productivity (or endorsement and recommendation to the Board of Directors if it exceeds delegated authority).
- Trust driven significant activity connected with the wholly owned subsidiary Summerhill Services Limited – through Board of Directors.

3.3.2 In addition, all staff within the Trust have the responsibility to flag potential Significant Transactions.

3.3.3 If the Council of Governors identify any potential Significant Transactions, they should raise this with the Board of Directors through the Lead Governor.

3.3.4 The Executive Director of Finance will be informed of all potential Significant Transactions and will review to confirm that the transaction will be further assessed.

3.3.5 A central register of all identified transactions will be maintained by the Planning and Development team which will contain details of whether transactions have been assessed as being significant and log key meetings where decisions have been made.

3.4 Assessing whether a transaction is significant

3.4.1 NHS foundation trusts are permitted to decide themselves what constitutes a “Significant Transaction”. Paragraph 51A of Schedule 7 of the NHS Act 2006, as amended by the Health and Social Care Act 2012, states that:

(2) “Significant Transaction” means a transaction or arrangement of such description as may be specified in the Trust’s constitution.

(3) If an NHS foundation trust does not wish to specify any descriptions of transaction or arrangement for the purposes of subsection (2), the constitution of the trust must specify that it contains no such descriptions.

- 3.4.2 Clause 35 of the Trust’s constitution does not provide any definition of a Significant Transaction. This has been agreed by the Council of Governors and Board of Directors.
- 3.4.3 Instead, each potential Significant Transaction must be assessed on a case-by-case basis using a range of monetary and non-monetary criteria. Examples of criteria that can be used can be found in Appendix 4. This assessment will be coordinated by the Executive Director of Finance.
- 3.4.4 This will be done prior to a transaction being completed.
- 3.4.5 Sometimes there will be timing difficulties in assessing whether a transaction is significant, and it may have to be done close to transaction completion due to information being available.
- 3.4.6 The assessment of whether a transaction is significant must be taken to the Executive Team and Finance, Performance and Productivity Committee (Board of Directors if above delegated limits) for initial review and recommendation, and to the Council of Governors for review and agreement. The Council of Governors will receive the following information:
- Background to the transaction – either through a written report or a presentation. This will include a clear explanation of what the transaction is and the potential impact for the Trust as well as benefits to patients and the wider public.
 - Assessment against Significant Transaction criteria.
 - Recommended conclusion as to whether a transaction is deemed to be significant or not.
- 3.4.7 If the Council of Governors disagree with the assessment of whether or not a transaction is significant, they need to state the reasons and a meeting held with the Lead Governor, Chief Executive and Trust Chair to resolve the issue.
- 3.4.8 Consideration must also be given to NHSE’s guidance (October 2022) and if required, they will be informed of the Significant Transaction by the Executive Director of Finance. See section 3.7.
- 3.5 Due diligence processes
- 3.5.1 Internal due diligence processes must be carried out on all Significant Transactions. These will be tailored depending on the nature of the transaction. Risks will be identified and recorded in line with the Risk Management Policy on the appropriate risk register within the relevant Executive Director’s portfolio or the project risk register (if applicable).
- 3.5.2 In some circumstances external due diligence will need to be procured, for example legal, corporate finance, tax or strategy advisors. This could be through internal audit, existing contractors or the appointment of external advisors. The Executive Director of Finance, in consultation with the Executive Team, will assess this need.
- 3.5.3 Examples of when this may be necessary include:
- Financial opinion
 - Complex transaction and specific skillset needed e.g. PFI financing
 - Mergers or acquisitions.

- Assurance required that due process has been followed in our internal processes.
- 3.5.4 Depending on the size of the transaction, NHS England may require Board Self Certification or want to carry out a detailed review of the transaction. This is described in more detail in Section 3.7.
- 3.5.5 However, as per the NHS Act 2006 (as amended by the Health and Care Act 2022), all statutory transactions are reportable to NHS England regardless of their size. This will require the board(s) of participating Trust(s) in the case of `Material transactions` to submit self-certification(s) to NHSE in connection with key risk areas covering:
- quality and patient benefits;
 - integration delivery;
 - finance; and
 - more general items (covering the need to certify that they have considered detailed option appraisals and taken appropriate external advice from professional advisers).
 - NHSE may also require the Trust to submit the following additional documents (where there is a reasonable case for this to be done); the transaction agreement, evidence of approval by the boards of the trusts involved, evidence of approval of the transaction by the majority of the governors and the proposed constitution for the enlarged trust (if applicable).
- 3.5.6 In the case where NHSE classifies a transaction as `significant`, then beyond providing the same level of self-certification and documentation as would be required for a material transaction,
- an additional and more involved process will apply, comprising two gateway processes that trusts must submit and secure approval for. i.e.
 - A strategic case – setting out the rationale for the transaction.
 - A full business case – setting out how the transaction will be executed and how the benefits will be delivered.
 - In each of these cases, NHSE will consider the documentation against specific RAG-rated key lines of enquiry under specified domains, however, a `red` status will not implying the transaction will be stopped as NHSE will balance the gains against any risks.
- 3.5.7 Council of Governors must be consulted on a case-by-case basis about the process that should be followed to enable them to be involved and informed in order to endorse the transaction. This will take into account the nature, complexity, impact and risk of the transaction. However, the Council's approval must be sought for all `material and/or significant transactions`. Involvement could take any one or more of the following forms:
- The nominated Lead Governor.
 - A working group of the Council of Governors who would meet to look at the proposal and process in more detail.
 - Attendance at Board of Directors meetings where the transaction is considered.
 - Update reports on the process and due diligence to formal Council of Governor meetings.

3.5.8 Where there are concerns about whether the Trust is acting in its best interests, these should be raised in accordance with the Counter Fraud and Anti Bribery Policy.

3.6 Approval of Significant Transactions

3.6.1 Board of Directors – the Board of Directors is responsible for making the formal decision whether to proceed with the transaction. They will approve and the transaction will be presented to the Council of Governor for endorsement however, the ultimate decision for the transaction can go ahead rests with the Board.

3.6.2 Council of governors – As described in Section 1.1, the Council of Governors is required to endorse a significant transaction. This means they need to satisfy themselves that the Board of Directors has been thorough and comprehensive in reaching its proposal and appropriately considered the interests of members and the public as part of the decision-making process. They must be assured that a due process has been followed, that the Board has sought and obtained assurance regarding risk and has taken account of the downside and its possible consequences.

3.6.3 The Council of Governors will need to receive adequate information from the Board of Directors to enable it to make its decision to endorse the transaction. The nature of this information will vary depending on the specific nature of the transaction. Examples of information that the Council of Governors may require to give it the assurances they need are set out in Appendix 5.

3.6.4 Provided reasonable assurance is obtained, governors should not unreasonably withhold their consent for a proposal to go ahead.

3.6.5 This agreement will be obtained at a formal Council of Governors meeting, which depending on the nature of the transaction may be a private meeting. However, as individual governors (or a sub-group of governors) do not have any statutory powers to act on behalf of the full Council of Governors, every effort will be made to present any significant transactions to the full Council.

3.6.6 If the Council of Governors raises a concern about the process or the due diligence which prevents it approving the transaction, then its concern will be addressed by the Executive Directors and taken to Board of Directors for approval.

3.6.7 If there is a disagreement between the Board of Directors and Council of Governors about the approval of a transaction, a meeting will be held with the Lead Governor, Chief Executive and Trust Chair to resolve the issue. The Council in full session will still need to endorse what has been resolved on, however, the ultimate decision to either proceed or not with the transaction rests with the Board of Directors.

3.7 Reporting to NHSE

3.7.1 If a transaction represents 10%+ of assets, income or capital, it is reportable to NHSE, however, all statutory transactions are reportable to NHS England, regardless of their size. The NHSE guidance “*Assuring and supporting complex change Statutory transactions, including mergers and acquisitions*”, must be consulted as the transaction may be subject to either Board Certification or a Detailed Review depending on its nature or whether it meets certain monetary thresholds or risk factors set out in the guidance.

- 3.7.2 NHSE has the statutory powers to support, review and approve transactions. The legislation dictates that NHSE can only grant an application for a merger, acquisition, dissolution or separation where they are satisfied that trusts have taken the necessary steps to prepare for the transaction, and where the grant is also approved by the Secretary of State.
- 3.7.3 However, the SoS's approval is not required for FT dissolutions. For other transactions, NHSE will seek the support of the Secretary of State on trusts' behalf, but trusts may be required to provide supporting information further to FBC submissions, in response to SoS requests.
- 3.7.4 NHSE encourage early 'informal' engagement when the transaction is being strategically assessed so that they can provide support, advice and consider whether the proposed transaction would meet their thresholds or need reviewing by the Competitions and Markets Authority.
- 3.7.5 Transactions defined by NHSE as "material" will require Board of Directors to make a Self-Certification
- 3.7.6 Transactions defined by NHSE as "significant" will be subject to a detailed review and approval by NHSE. This will consider four dimensions of strategy, transaction execution, quality and finance. The review will result in a transaction risk rating of red, amber or green. Transactions should only be proceeded with if the risk rating is green or amber.

3.8 Training

- 3.8.1 Related training will be provided to members of the Council of Governors (CoG) or Board of Directors once every three years and/or whenever the CoG or Board of Directors has witnessed significant renewal (i.e. at least 30% of new members have joined) as training will enable either of these bodies to fulfil their duties. Such training will also be provided to senior managers, especially those who may be involved in leading their service during a Significant Transaction or to create awareness and may be delivered by staff from the Trust or Internal/External Audit and may include:
- Training and refresher training of the Significant Transactions Policy.
 - Training on specific types of transaction such as merger and acquisitions.
 - Financial analysis training.
 - Training on how to interpret a due diligence report.

3.9 Communication with Members

- 3.9.1 Once a final decision has been taken on the proposed Significant Transaction and it is no longer deemed as confidential, the Trust will communicate the transaction to relevant stakeholders. The method of communication will be agreed for each transaction and could include the Trust's website, an advertised drop-in session or a newsletter.

3.10 Post transaction

- 3.10.1 A review will be carried out one year post the Significant Transaction taking place to assess its reputational, financial, quality and operational impact against the original plans. This will be coordinated by the Executive Director of Finance and reported to the Finance, Performance and Productivity Committee and the Council of Governors.

3.11 What the Guidance, Code and Legislation imply by the CoG `approving` significant transactions.

3.11.1 The CoG has as one of its statutory roles and responsibilities to `approve` significant transaction - mergers, acquisitions, separations and dissolutions etc as set out in: -

- *Your statutory duties – A reference guide for NHS foundation trust governors – 2013* and subsequent amendments to the *2006 Act* made by the *Health and Social Care Act 2012*.
- *Addendum to your statutory duties – reference guide for NHS foundation trust governors – 2022*.
- Reference to the powers and duties of the CoG as set out in the new *Code of governance for NHS provider trusts – 2022*.

3.11.2 However, the above resources and especially the *Addendum to your statutory duties – reference guide for NHS foundation trust governors*, advise that by the Council of Governors approving a significant transaction means approving that it is satisfied (assured) that the Board has been thorough and comprehensive in reaching its decision about the transaction. The Council isn't required to `approve` the merit of the significant transaction as the Board has the responsibility to decide whether a transaction should proceed or not in line with `paragraph 15(2) of Schedule 7 to the NHS Act 2006`.

3.11.3 For the purpose of clarity and to avoid any confusion, the word `endorse` and its variance will be used throughout this policy to imply `approve` when referring to the CoG's role to `approve` significant transactions.

4 Responsibilities

Post(s)	Responsibilities	Ref
Executive Directors	Reviewing the assessment of whether a transaction is significant.	3.4
	Responsible for ensuring proper processes for developing proposals and carrying out due diligence.	3.5
	Responsible for reporting transactions to NHS Improvement where required.	3.7
Non-Executive Directors	Responsible for challenging the executives to justify their recommendations, deal with the risks involved and seek assurance that the executives decisions are the right ones	3.4/3.5/ 3.6
Board of Directors	Responsible for making the decision to proceed with a transaction.	3.6
	Responsible for making information available to the Council of Governors to allow it to discharge their duties.	3.6
	Responsible for ensuring Governors have training to ensure appropriate skills and experience to review Significant Transactions.	3.8

Council of Governors	Will review the Register of Potential Significant Transactions	3.3
	Responsible for assessing on a case-by-case basis whether a transaction is “significant”	3.4
	Needs to satisfy itself that the Board of Directors has: <ul style="list-style-type: none"> • Been thorough and comprehensive in reaching its proposal. • Appropriately obtained and considered the interests of members and the public as part of the decision-making process. 	3.5/3.6
	Approval of the transaction	3.6
Executive Director of Finance	Regular review of this Policy	
	Review all identified transactions to confirm that the transaction will be further assessed as significant	3.3
	Coordinate the assessment of a transaction as significant.	3.4
	Assessing the need, in consultation with the Executive Team, for external due diligence.	3.5
	Coordinate the Post Transaction Review.	3.10
Planning & Development Team	Responsible for identifying any transactions that may be deemed to be significant and flagging to the Executive Director of Finance.	3.3
	Maintaining a Register of Potential Significant Transactions.	3.3
	Responsible for contributing to the assessment of a transaction where required	3.4
	Responsible for contributing to due diligence and risk assessment processes where required	3.5
Deputy Director of Finance	Responsible for identifying any transactions that may be deemed to be significant and flagging to the Executive Director of Finance	3.3
	Responsible for financial assessment of a transaction.	3.4
	Responsible for carrying out financial due diligence and assessment of risk	3.5
Corporate leads	Responsible for identifying any transactions that may be deemed to be significant and flagging to the Executive Director of Finance.	3.3
	Responsible for contributing to the assessment of a transaction where required.	3.4

	Responsible for contributing to due diligence and risk assessment processes where required	3.5
Policy lead	Monitor implementation of the policy	

5 Development and Consultation Process

Consultation summary		
Date policy issued for consultation	N/A	
Number of versions produced for consultation	N/A	
Committees or meetings where this policy was formally discussed		
PDMG	13 th November 2024	
Finance, Performance and Productivity Committee	21 st November 2024	
Where else presented	Summary of feedback	Actions / Response

6 Reference Documents

- Business Development Strategy
- Constitution
- Counter Fraud and Anti Bribery Policy

7 Bibliography

- NHS England Assuring and supporting complex change — Statutory transactions, including
- mergers and acquisitions
- NHS England Guidance for assuring and supporting complex change –subsidiaries guidance for trusts forming or changing a subsidiary

8 Glossary

Statutory Transaction — These are the most significant transactions and include the following:

- mergers (section 56)
- acquisitions (section 56A)
- dissolutions (NHS trusts – schedule 4; foundation trusts – section 57A).
- separations (section 56B)
- transfer schemes (section 69A)

Significant Transaction — A transaction deemed to be high risk, requiring NHS England review of the proposal in detail. This will include Statutory Transactions, but not all Significant Transactions are Statutory Transactions

Material Transaction — A transaction deemed to be lower risk, requiring NHS England to undertake only limited assurance work.

See Appendix 6 for more details.

9 Audit and Assurance

Element to be monitored	Lead	Tool	Frequency	Reporting Committee
Audit of implementation of this policy with regards Significant Transactions	AD Corporate Governance	Surveys & Desktop Review of application of Policy.	Yearly	FPP

10 Appendices

Appendix 1 Equality Impact Assessment.

Appendix 2 Significant Transactions process.

Appendix 3 Summary of the role of the Council of Governors.

Appendix 4 Example of monetary and non-monetary criteria to be used in assessing whether a transaction is significant.

Appendix 5 Sources of assurance for Council of Governors

Appendix 6 Definitions of Statutory, Significant and Material Transactions

11 Appendix 1 Equality Assessment

Equality Analysis Screening Form

A word version of this document can be found on the HR support pages on Connect

<http://connect/corporate/humanresources/managementsupport/Pages/default.aspx>

Title of Policy	Significant Transactions Policy		
Person Completing this policy	David Tita	Role or title	AD Corporate Governance
Division	Corporate Governance	Service Area	Corporate Governance
Date Started	August 2024	Date completed	August 2024
Main purpose and aims of the policy and how it fits in with the wider strategic aims and objectives of the organisation.			
<p>The Significant Transactions Policy sets out how the Trust will ensure that it carries out formal processes in relation to Significant Transactions and adheres to relevant legislative and regulatory frameworks. This process includes the identification of potential transactions, assessment of whether a transaction is 'significant', internal and external due diligence processes, reporting to NHS Improvement and approval of a transaction.</p> <p>The Policy makes sure that all staff and the Council of Governors understand their obligations and responsibilities in relation to Significant Transactions. It also makes sure that the Council of Governors receive adequate training and an appropriate level of information in order to them to discharge their responsibilities.</p>			
Who will benefit from the policy?			
<p>The organisation is the key beneficiary – the policy ensures that legislative and regulatory responsibilities are complied with and that appropriate due diligence is carried out on transactions.</p> <p>The policy ensures that staff are clear on roles and responsibilities in relationship to Significant Transactions. The Policy makes sure that all staff and the Council of Governors understand their obligations and responsibilities in relation to Significant Transactions. It also makes sure that the Council of Governors receive adequate training and an appropriate level of information in order to them to discharge their responsibilities</p>			
Does the policy affect service users, employees or the wider community?			
<i>Add any data you have on the groups affected split by Protected characteristic in the boxes below. Highlight how you have used the data to reduce any noted inequalities going forward</i>			

N/A				
Does the policy significantly affect service delivery, business processes or policy?				
<i>How will these reduce inequality?</i>				
Implementation of Significant Transactions could significantly affect service delivery, business processes or policy, hence this policy seeks to mitigate against these unintended consequences by recommending due diligence and outlining a clear process for staff to follow when considering engaging the Trust in Significant Transactions.				
Does it involve a significant commitment of resources?				
<i>How will these reduce inequality?</i>				
No				
Does the policy relate to an area where there are known inequalities? (e.g. seclusion, accessibility, recruitment & progression)				
No				
Impacts on different Personal Protected Characteristics – Helpful Questions:				
<i>Does this policy promote equality of opportunity? Eliminate discrimination?</i>		<i>Promote good community relations?</i>		
<i>Eliminate harassment?</i>		<i>Promote positive attitudes towards disabled people?</i>		
<i>Eliminate victimisation?</i>		<i>Consider more favourable treatment of disabled people?</i>		
		<i>Promote involvement and consultation?</i>		
		<i>Protect and promote human rights?</i>		
Please click in the relevant impact box and include relevant data				
Personal Protected Characteristic	No/Minimum Impact	Negative Impact	Positive Impact	Please list details or evidence of why there might be a positive, negative or no impact on protected characteristics.
Age	x			It is anticipated that age will not have an impact in terms of discrimination as this policy is about a process to be followed to ensure the Trust complies with legislative and regulatory guidance in relation to any Significant Transactions carried out. The policy does not directly impact staff, service users or stakeholders in terms of protected characteristics.

Including children and people over 65 Is it easy for someone of any age to find out about your service or access your policy? Are you able to justify the legal or lawful reasons when your service excludes certain age groups				
Disability	x			It is anticipated that disability will not have an impact in terms of discrimination as this policy is about a process to be followed to ensure the Trust complies with legislative and regulatory guidance in relation to any Significant Transactions carried out. The policy does not directly impact staff, service users or stakeholders in terms of protected characteristics.
Including those with physical or sensory impairments, those with learning disabilities and those with mental health issues Do you currently monitor who has a disability so that you know how well your service is being used by people with a disability? Are you making reasonable adjustment to meet the needs of the staff, service users, carers and families?				
Gender	x			It is anticipated that gender will not have an impact in terms of discrimination as this policy is about a process to be followed to ensure the Trust complies with legislative and regulatory guidance in relation to any Significant Transactions carried out. The policy does not directly impact staff, service users or stakeholders in terms of protected characteristics.
This can include male and female or someone who has completed the gender reassignment process from one sex to another Do you have flexible working arrangements for either sex? Is it easier for either men or women to access your policy?				
Marriage or Civil Partnerships	x			It is anticipated that marriage or civil partnership will not have an impact in terms of discrimination as this Policy is about a process to be followed to ensure the Trust complies with legislative and regulatory guidance in relation to any Significant Transactions carried out. The policy does not directly impact staff, service users or stakeholders in terms of protected characteristics.
People who are in a Civil Partnerships must be treated equally to married couples on a wide range of legal matters Are the documents and information provided for your service reflecting the appropriate terminology for marriage and civil partnerships?				
Pregnancy or Maternity	x			It is anticipated that pregnancy or maternity will not have an impact in terms of discrimination as this policy is about a process to be followed to ensure

				the Trust complies with legislative and regulatory guidance in relation to any Significant Transactions carried out. The policy does not directly impact staff, service users or stakeholders in terms of protected characteristics.
This includes women having a baby and women just after they have had a baby Does your service accommodate the needs of expectant and post natal mothers both as staff and service users? Can your service treat staff and patients with dignity and respect relation in to pregnancy and maternity?				
Race or Ethnicity	x			It is anticipated that race or ethnicity will not have an impact in terms of discrimination as this policy is about a process to be followed to ensure the Trust complies with legislative and regulatory guidance in relation to any Significant Transactions carried out. The policy does not directly impact staff, service users or stakeholders in terms of protected characteristics.
Including Gypsy or Roma people, Irish people, those of mixed heritage, asylum seekers and refugees What training does staff have to respond to the cultural needs of different ethnic groups? What arrangements are in place to communicate with people who do not have English as a first language?				
Religion or Belief	x			It is anticipated that religion or belief will not have an impact in terms of discrimination as this policy is about a process to be followed to ensure the Trust complies with legislative and regulatory guidance in relation to any Significant Transactions carried out. The policy does not directly impact staff, service users or stakeholders in terms of protected characteristics.
Including humanists and non-believers Is there easy access to a prayer or quiet room to your service delivery area?				

When organising events – Do you take necessary steps to make sure that spiritual requirements are met?

Sexual Orientation	x			It is anticipated that sexual will not have an impact in terms of discrimination as this policy is about a process to be followed to ensure the Trust complies with legislative and regulatory guidance in relation to any Significant Transactions carried out. The policy does not directly impact staff, service users or stakeholders in terms of protected characteristics.
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Including gay men, lesbians and bisexual people
Does your service use visual images that could be people from any background or are the images mainly heterosexual couples? Does staff in your workplace feel comfortable about being 'out' or would office culture make them feel this might not be a good idea?

Transgender or Gender Reassignment	x			It is anticipated that transgender or gender reassignment will not have an impact in terms of discrimination as this policy is about a process to be followed to ensure the Trust complies with legislative and regulatory guidance in relation to any Significant Transactions carried out. The policy does not directly impact staff, service users or stakeholders in terms of protected characteristics.
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This will include people who are in the process of or in a care pathway changing from one gender to another
Have you considered the possible needs of transgender staff and service users in the development of your policy or service?

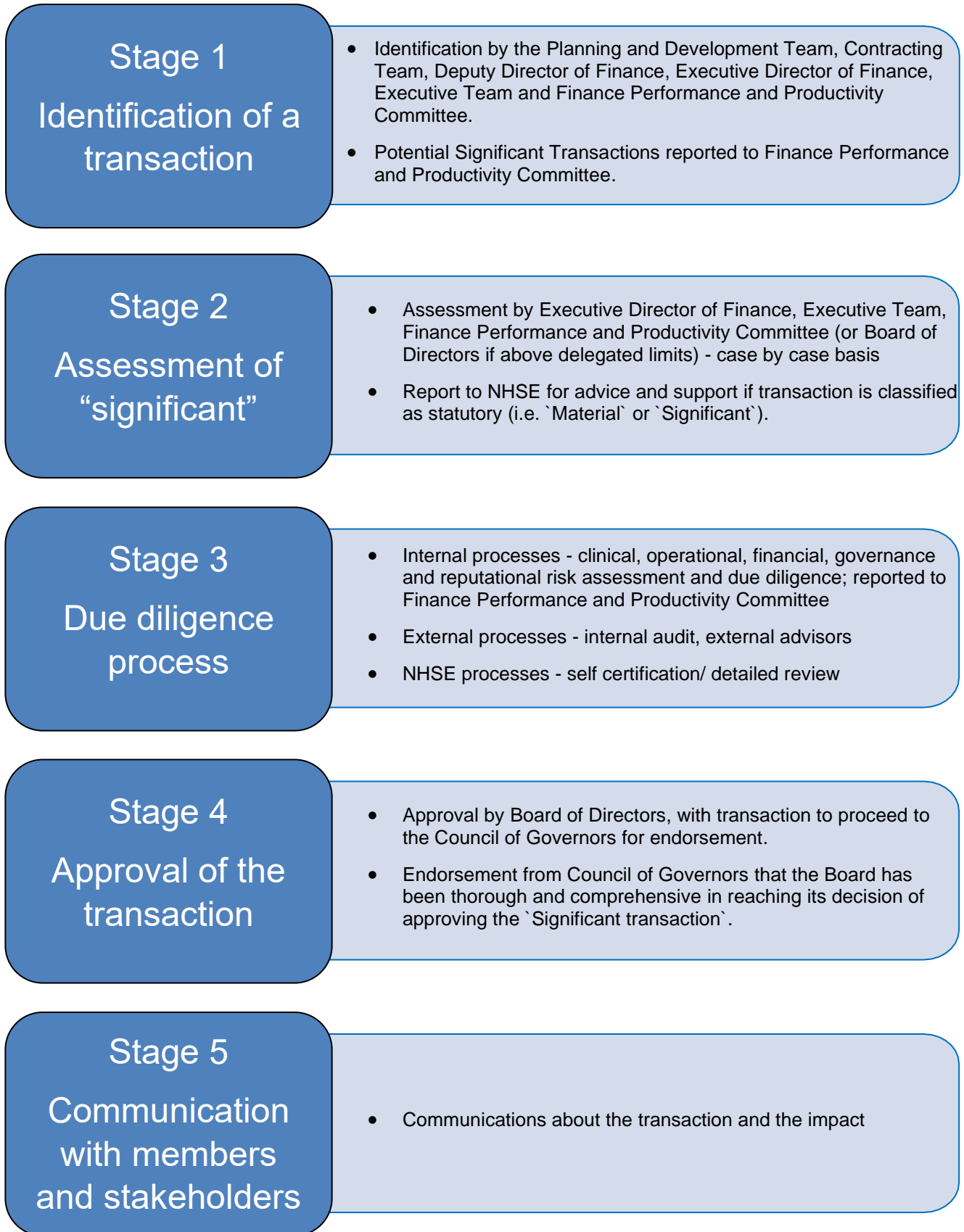
Human Rights	x			It is anticipated that human rights will not have an impact in terms of discrimination as this policy is about a process to be followed to ensure the Trust complies with legislative and regulatory guidance in relation to any Significant Transactions carried out. The policy does not directly impact staff, service users or stakeholders in terms of protected characteristics.
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Affecting someone's right to Life, Dignity and Respect? Caring for other people or protecting them from danger?
The detention of an individual inadvertently or placing someone in a humiliating situation or position?

If a negative or disproportionate impact has been identified in any of the key areas would this difference, be illegal / unlawful? I.e. Would it be discriminatory under anti-discrimination legislation. (The Equality Act 2010, Human Rights Act 1998)

	Yes N/A	No N/A		
What do you consider the level of negative impact to be?	High Impact	Medium Impact	Low Impact	No Impact
				No Impact
<p>If the impact could be discriminatory in law, please contact the Equality and Diversity Lead immediately to determine the next course of action. If the negative impact is high a Full Equality Analysis will be required.</p> <p>If you are unsure how to answer the above questions, or if you have assessed the impact as medium, please seek further guidance from the Equality and Diversity Lead before proceeding.</p>				
<p>If the policy does not have a negative impact or the impact is considered low, reasonable or justifiable, then please complete the rest of the form below with any required redial actions, and forward to the Equality and Diversity Lead.</p>				
Action Planning:				
How could you minimise or remove any negative impact identified even if this is of low significance?				
Not applicable – no negative impacts identified				
How will any impact or planned actions be monitored and reviewed?				
The policy only needs to be used in the rare event of a Significant Transaction taking place. Examples of Significant Transactions in the past have been the 0-25 service transfer and the SSL transfer. Equality Impact Assessments will be carried out for each Significant Transaction.				
How will you promote equal opportunity and advance equality by sharing good practice to have a positive impact other people as a result of their personal protected characteristic.				
Not applicable to this policy				
Please save and keep one copy and then send a copy with a copy of the policy to the Senior Equality and Diversity Lead at bsmhft.edi.queries@nhs.net . The results will then be published on the Trust's website. Please ensure that any resulting actions are incorporated into Divisional or Service planning and monitored on a regular basis				

12 Appendix 2 Significant Transactions process



13 Appendix 3 Summary of the role of the Council of Governors

Stage 1 - Identification of a potential Significant Transaction		
Responsibility To flag any potential transactions to the Executive Director of Finance.	Information Not applicable	Timescales On-going
Stage 2 – Assessment of “significant”		
Responsibility Executive Team to agree whether a transaction is “significant” based on the recommendations of the Executive Director of Finance. Report the transaction to the FPP & NHSE for advice.	Information Report/ presentation containing background and explanation of the transaction; assessment against Significant Transaction criteria and recommended conclusion	Timescales Before due diligence is started.
Stage 3 – Due diligence processes		
Responsibility Operational departments involved, probably with external professional support to ensure due diligence is undertaken. NHSE processes - self certification	Information To gather all supporting information and evidence about the transaction e.g. through a working group, attendance at Board of Directors, update reports or training etc.	Timescales Throughout the assessment process
Stage 4 – Approval of the Significant Transaction		
Responsibility CoG to endorse the transaction by assuring themselves that the Board of Directors has been thorough and comprehensive in reaching its proposal and appropriately obtained and considered the interests of members and the public as part of the decision-making process.	Information Report or presentation containing sources of assurance.	Timescales After the Board of Directors make the decision to proceed with the transaction
Stage 5 - Communication with members and wider stakeholders		
Responsibility To agree the communication of the transaction to the relevant stakeholders.	Information The Trust will assist the Governors in doing this. The method of communication will be agreed for each transaction e.g. website, drop-in sessions or a newsletter	Timescales After the transaction has been endorsed by the CoG post Board approval.

14 Appendix 4 Example of monetary and non-monetary criteria to be used in assessing whether a transaction is significant

See Appendix 6 for more detail.

This list of criteria is not exhaustive and other criteria may be assessed relevant to the nature of the transaction.

The criteria are not intended to be set as pass/fail criteria i.e. if one fails, it means the transaction is significant. Instead, a balanced view will be taken of the results across all of the criteria and level of risk/exposure present.

Monetary criteria

The value of the transaction in relation to:

- Income e.g. from commissioners - 10% in line with NHSE reporting thresholds.
- Assets e.g. buildings - 10% in line with NHSE reporting thresholds.
- Capital e.g. market value of target organisation – that meets the capital business case reporting threshold of £25m.

Whether it involves a volatile income e.g. Payment by Results. Is it a loss-making contract or acquisition.

Will non-NHS income be increased by more than 5%.

Will there be significant financial penalties for non-performance. Will there be significant liabilities e.g. redundancies from TUPE. Will it increase the Trust's debt levels.

Does it commit to significant future efficiencies.

Non-monetary criteria

Is the transaction moving away from Trust strategy e.g.

- Not relating to core mental health services.
- Outside of the West Midlands conurbation.
- Not synergistic with core mental health services.

Does it lead to a change in function or form e.g. commissioning. Does it involve significant reputational risk.

Will it involve separate reporting to NHSE. Does it involve a new CQC registration.

Will it have a significant adverse impact on existing services. Could the transaction change the competitive landscape.

Does it have an adverse impact on equality.

15 Appendix 5 Sources of Assurance for Council of Governors

The precise nature of the information to be reported by the Board of Directors to the Council of Governors will vary depending on the specific nature of the Significant Transaction, but is likely to comprise some or all of the information below:

Evidence that the Board of Directors has:	Potential sources of assurance (not an exhaustive list)
Carried out an appropriate level of financial and market due diligence relating to the proposed transaction.	Tender due diligence checklist. Internal audit review of significant risks highlighted during tender process for which mitigations are not possible. Certification that price covers cost and includes margin from Executive Director of Finance. Formal due diligence report.
Considered the implications of the proposed transaction on the Trust's risk assessment and risk ratings, having taken full account of reasonable downside sensitivities.	Certification from Executive Director of Finance. Formal due diligence report.
Conducted appropriate inquiry about the probity of any partners involved in the transaction, taking into accounts the nature of the services provided and likely reputational risk.	Partner due diligence checklist. Formal due diligence report.
Conducted an appropriate assessment of the nature of services being undertaken as a result of the transaction and any implications for reputational risk arising from these.	Certification that service is deliverable and non-impacting from Executive Director of Operations. Equality impact assessment. Internal audit review of significant risks highlighted during tender process for which mitigations are not possible.
Received appropriate external advice from independent professional advisors with relevant experience and qualifications (if required).	Executive Summary from External Advisors Report.
Taken into account the best practice advice in the guidance published by Monitor or commented by exception where this is not the case.	Statement from the Board of Directors.

Evidence that the Board of Directors has:	Potential sources of assurance (not an exhaustive list)
Addressed any legal issues associated with the transfer of staff (if relevant).	Formal due diligence report.
Complied with any consultation requirements.	Summary of consultation process and feedback.
Established the organisational and management capacity and skills to deliver the planned benefits of the proposed transaction.	Formal due diligence report.
Involved senior clinicians at the appropriate level in the decision-making process and received confirmation from them that there are no material clinical concerns in proceeding with the transaction, including consideration of the subsequent configuration of clinical services.	Report of views of relevant clinicians.
In the case of a contract of a specified period, ensured appropriate legal protection in relation to staff, including on termination of the contract.	Formal due diligence report.
Ensured relevant commercial risks are understood.	Formal due diligence report.
Prepared a post transaction integration plan.	Confirmation that Board have approved a Mobilisation Plan.
Prepared plans for applying appropriate quality governance arrangements.	Quality impact assessment. Certification that a quality service can be delivered with compliance with regulatory standards from Executive Director of Nursing and the Medical Director. Formal due diligence report.

The table above covers all areas where consideration should as a matter of course be given, unless there is a reason for doing so. In addition, the Board might consider it advisable to consider other matters, such as the views of impacted staff, but these are at the Board's discretion.

Appendix 6 Definitions of Statutory, Significant and Material Transactions

Statutory Transaction — These are the most significant transactions and include the following:

- mergers (section 56)
- acquisitions (section 56A)
- dissolutions (NHS trusts – schedule 4; foundation trusts – section 57A)
- separations (section 56B)
- transfer schemes (section 69A)

Significant Transaction — A transaction deemed to be high risk, requiring NHS England review of the proposal in detail. This will include all Statutory Transactions.

It will also include any transaction which is covered by the following parameters.

Measure	Description	Parameter	BSMHFT Group equivalent
Assets	The gross assets of the proposed transaction divided by the gross assets of the trust	>10%	>£34m
income	The income of the proposed transaction divided by the income of the trust	>10%	>£67m
Staff	The number of employees involved divided by the total number of trust employees	>5%	>230 WTE

There are two other definitions which would constitute a significant transaction

- Novel, contentious or repercussive schemes — subject to management judgement
- Material change for an existing subsidiary — subject to management judgement

Material Transaction — A transaction deemed to be lower risk, requiring NHS England to undertake limited assurance work.

It will also include any transaction which is covered by the following parameters.

Measure	Description	Parameter	BSMHFT Group equivalent
Assets	The gross assets of the proposed transaction divided by the gross assets of the trust	>5%	>£17m
income	The income of the proposed transaction divided by the income of the trust	>5%	>£34m
Staff	The number of employees involved divided by the total number of trust employees	>2%	>100 WTE

It will also include any novel, contentious or repercussive schemes or material changes for an existing subsidiary which are not defined as a Significant Transaction.

NB: BSMHFT Group Equivalent is indicative and relates to 2023/24.