



SIGNIFICANT TRANSACTIONS POLICY

POLICY NUMBER & CATEGORY	CG08	Corporate Governance
VERSION NO & DATE	3	March 2020
RATIFYING COMMITTEE	Finance, Performance and Productivity Committee	
DATE RATIFIED	March 2020	
ANTICIPATED REVIEW DATE:	March 2023	
EXECUTIVE DIRECTOR	Executive Director of Finance	
POLICY LEAD	Head of Planning and Development	
POLICY AUTHOR (if different from above)	Head of Planning and Development	
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 Improvement 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 them to discharge their responsibilities

POLICY REQUIREMENT (see Section 2)

Requirements include:

- All transactions 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 Team and Finance, Performance and Productivity Committee (Trust Board if above delegated limits) and considered 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 Improvement or external due diligence, which must be assessed on a case by case basis.
- The Council of Governors has a statutory responsibility to approve the transaction through considering whether the Trust Board 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.

CONTENTS

1	INTRODUCTION	3
1.1	Rationale (Why).....	3
1.2	Scope (Where, When, Who).....	3
1.3	Principles (Beliefs).....	4
2	POLICY (What)	4
3	PROCEDURE.....	5
4	RESPONSIBILITIES	10
5	DEVELOPMENT AND CONSULTATION PROCESS.....	11
6	REFERENCE DOCUMENTS	12
7	BIBLIOGRAPHY	12
8	GLOSSARY	12
9	AUDIT AND ASSURANCE	13
10	APPENDICES	14

1 INTRODUCTION

1.1 Rationale (Why)

Entering into significant transactions 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 approval of its Council of Governors if it proposes to enter into a significant transaction.
- NHS Improvement consider the impact of transactions on an NHS Foundation Trust's compliance with its licence conditions and the guidance in the Transaction Guidance (November 2018) must be followed in terms of reporting transactions to NHS Improvement. Depending on the size of the transaction, it may be subject to detailed review.
- Some transactions may be subject to competition review by the Competitions and Markets Authority (CMA).

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 Trust Board 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 approve 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 Improvement, in line with requirements; and
- All staff involved in significant transactions are aware of the process and their roles and responsibilities.

1.2 Scope (Where, When, Who)

This policy will apply to all transactions that could be classed as significant.

A transaction can be:

- 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
- Trust determined activities connected with the wholly owned subsidiary Summerhill Services Limited

Each transaction must be assessed on a case by case basis as to whether it is deemed to be significant. This process is set out in detail in Section 3.3.

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

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 and approvals necessary 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 POLICY (What) –

- 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 (Trust Board if above delegated limits) and reviewed and **approved** 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 approved by the Finance, Performance and Productivity Committee, and where required, a private session of the Trust Board.
- 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 Trust Finance, Performance and Productivity Committee (or Trust Board if it exceeds 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 approve 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 approve 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 By 'approval' this 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 obtained and considered the interests of members and the public as part of the decision making process.
- 2.10 The **Board of Directors** have the responsibility for the decision as to whether a significant transaction will proceed.
- 2.11 Where a transaction fits within **NHS Improvement'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 Council of Governors will **communicate** the transaction to the Trust's members and the public.

3 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 have a role to play throughout the process and appendix 3 sets out a summary of their responsibilities, including when they will expect to be involved and what information they 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 Finance, Performance and Productivity Committee (or Trust Board if it exceeds delegated authority)
- 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 Trust Board if it exceeds delegated authority)
- Projects funded through PFI – by the Finance, Performance and Productivity (or Trust Board if it exceeds delegated authority)
- Joint ventures – always deemed significant
- Mergers and acquisitions – always deemed significant
- Dissolutions and separations – always deemed significant
- Investments or divestments – by the Finance, Performance and Productivity (or Trust Board if it exceeds delegated authority)
- Trust driven significant activity connected with the wholly owned subsidiary Summerhill Services Limited – through Trust Board

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 to 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 37.2 of the Trust’s constitution states that it does not have a definition of a significant transaction. This has been agreed by the Council of Governors and Trust Board.
- 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 (Trust Board if above delegated limits) for initial review and recommendation, and to the Council of Governors for review and approval. 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.
 - 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 NHS Improvement’s reporting requirements 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 relevant Executive Director risk register 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 Improvement 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 The 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 approve the transaction. This will take into account the nature, complexity, impact and risk of the transaction. Involvement could involve one or more of the following:

- 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 Trust Board meetings where the transaction is considered
- Update reports on the process and due diligence to formal Council of Governor meetings

3.5.6 Where concerns are had 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 **Trust Board** – the Trust Board is responsible for making the formal decision whether to proceed with the transaction. They will approve this in principle pending Council of Governors approval. Once Council of Governors approval has been received the transaction can go ahead.

3.6.2 **Council of governors** – As described in Section 1.1, the Council of Governors are required to approve a significant transaction. This means they need to satisfy themselves that the Trust Board 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. 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 them to make their decision to approve 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 them 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 approval will be obtained at a formal Council of Governors meeting, which depending on the nature of the transaction may be a private meeting.
- 3.6.6 If the Council of Governors raise a concern about the process or the due diligence which prevents them from approving the transaction, then this concern will be addressed by the Executive Directors and taken back to Trust Board for approval.
- 3.6.7 If there is a disagreement between the Trust Board 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.

3.7 Reporting to NHS Improvement

- 3.7.1 NHS Improvement consider the impact of transactions on an NHS Foundation Trust's compliance with licence conditions.

If a transaction represents **10%+** of assets, income or capital, it is **reportable** to NHS Improvement. The NHS Improvement '*Transactions guidance for trusts undertaking transactions, including mergers and acquisitions (2017)*' must be consulted as the transaction may be subject to either Board Certification or a Detailed Review depending on it's nature or whether it meets certain monetary thresholds or risk factors set out in the guidance.

- 3.7.2 NHS Improvement 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.
- 3.7.3 Transactions defined by NHS Improvement as "material" will require Trust Board to make a Self Certification
- 3.7.4 Transactions defined by NHS Improvement as "significant" will be subject to a detailed review by NHS Improvement. 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 Consideration must be given to any training that the Council of Governors or Board of Directors may require to fulfil their duties. This could 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 Council of Governors will communicate the transaction to the Trust's members and the public. The Trust will assist the Governors in doing this. 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.

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
The 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 them 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
	Need to satisfy themselves 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	3.3

	Review all identified transactions to confirm that the transaction will be further assessed as significant.	3.4
	Coordinate the assessment of a transaction as significant.	3.5
	Assessing the need, in consultation with the Executive Team, for external due diligence.	3.10
	Coordinate the Post Transaction Review	
Planning and 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	19 December 2019
Number of versions produced for consultation	1
Committees or meetings where this policy was formally discussed	

Finance, Performance and Productivity Committee		18 March 2020
Where else presented	Summary of feedback	Actions / Response

6 REFERENCE DOCUMENTS

Business Development Strategy

Business Development Policy

Constitution

Counter Fraud and Anti Bribery Policy

7 BIBLIOGRAPHY

Health and Social Care Act 2012

The NHS Foundation Trust Code of Governance – Monitor, 2014

Transactions guidance for trusts undertaking transactions, including mergers and acquisitions – NHS Improvement, 2017

Your Statutory Duties – A Reference Guide for NHS Foundation Trust Governors – Monitor, 2013

8 GLOSSARY

Acquisition – an application by an NHS foundation trust to acquire another NHS foundation trust or an NHS trust

Business Development – tenders, business cases or applications for new or existing business

Due diligence – investigation of an organisation or service prior to signing a Contract to ensure informed decision making based on cost, benefits and risk can take place

Merger – a merger of an NHS foundation trust with another NHS foundation trust or with an NHS trust. Both Board of Directors and Council of Governors will be dissolved and one new Board and Council will be formed.

Transaction – A transaction can be significant capital expenditure, winning a new contract to provide services, losing an existing contract to provide services, projects funded through PFI, joint ventures, mergers and acquisitions, dissolutions and separations, and investments and divestments

Separation – an application by an NHS foundation trust for its separation into two or more new foundation trusts

Significant transaction – A transaction deemed to be significant following assessment against a range of monetary and non-monetary criteria

9 AUDIT AND ASSURANCE

Element to be monitored	Lead	Tool	Freq	Reporting Arrangements
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Potential Significant transactions is regularly reported to Council of Governors	Head of Business Development	BD Activity Report	Quarterly	Finance, Performance and Productivity Committee
All assessments of significant transactions are approved by Council of Governors	Head of Business Development	/ BD Activity Report	Quarterly	Finance, Performance and Productivity Committee
All significant transactions are approved by Council of Governors	Head of Business Development	/ BD Activity Report	Quarterly	Finance, Performance and Productivity Committee

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 1 Equality Impact Assessment

Equality Analysis Screening Form

Title of Proposal	Significant Transactions Policy Review		
Person Completing this proposal	Abi Broderick	Role or title	Head of Planning and Development
Division	Strategy, People and Partnerships	Service Area	Planning and Development
Date Started	October 2019	Date completed	
Main purpose and aims of the proposal 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 proposal?			
<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>			
Impacts on different Personal Protected Characteristics – Helpful Questions:			
<i>Does this proposal promote equality of opportunity?</i> <i>Eliminate discrimination?</i> <i>Eliminate harassment?</i> <i>Eliminate victimisation?</i>		<i>Promote good community relations?</i> <i>Promote positive attitudes towards disabled people?</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 or leave blank if you feel there is no particular impact.				
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			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 proposal? Are you able to justify the legal or lawful reasons when your service excludes certain age groups				
Disability	x			As described above
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			As described above
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 proposal?				
Marriage or Civil Partnerships	x			As described above
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			As described above
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			As described above
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			As described above
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?				

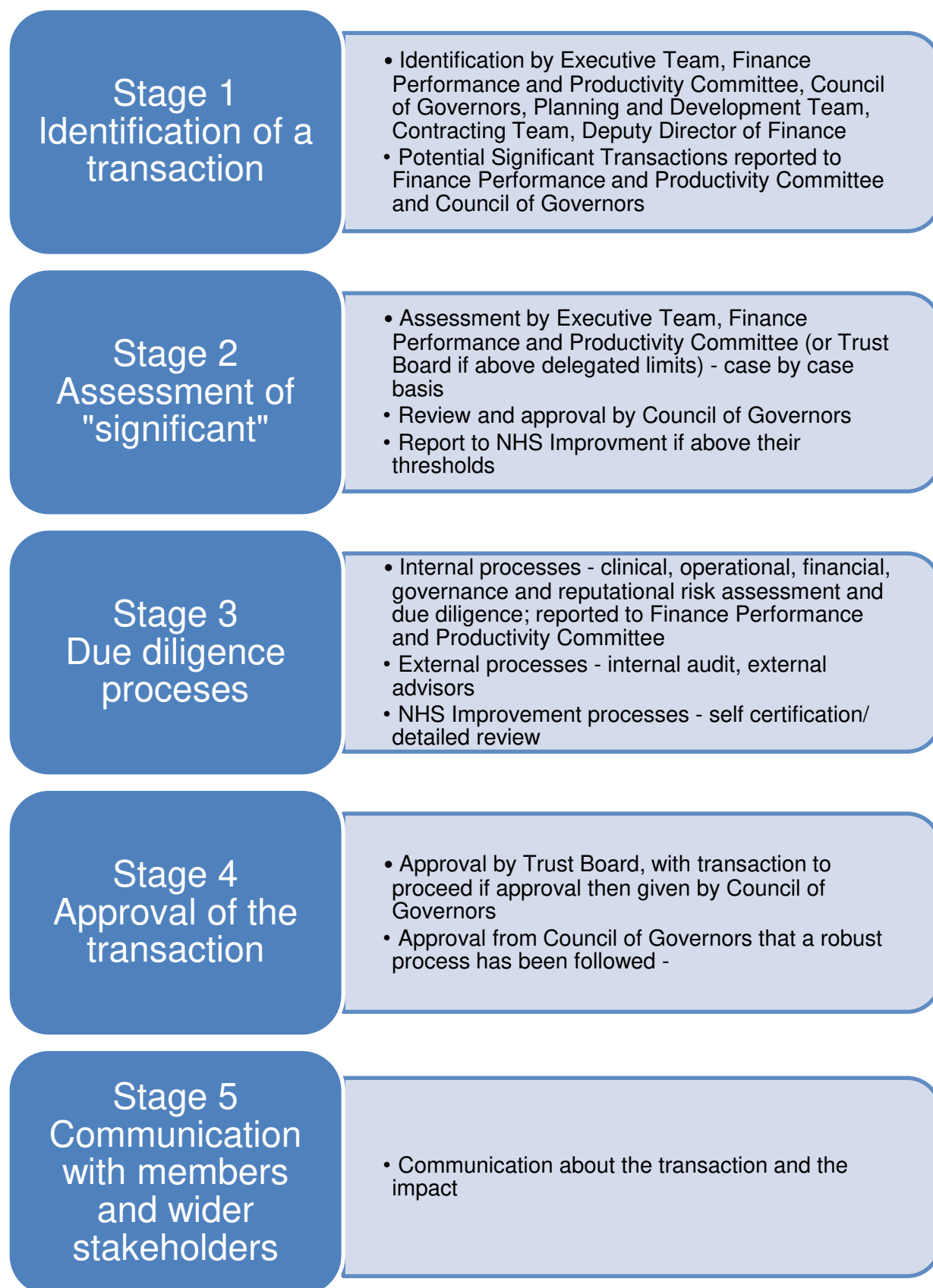
Sexual Orientation	x			As described above	
<p>Including gay men, lesbians and bisexual people</p> <p>Does your service use visual images that could be people from any background or are the images mainly heterosexual couples?</p> <p>Does staff in your workplace feel comfortable about being 'out' or would office culture make them feel this might not be a good idea?</p>					
Transgender or Gender Reassignment	x			As described above	
<p>This will include people who are in the process of or in a care pathway changing from one gender to another</p> <p>Have you considered the possible needs of transgender staff and service users in the development of your proposal or service?</p>					
Human Rights	x			As described above	
<p>Affecting someone's right to Life, Dignity and Respect?</p> <p>Caring for other people or protecting them from danger?</p> <p>The detention of an individual inadvertently or placing someone in a humiliating situation or position?</p>					
<p>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)</p>					
	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
<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 proposal 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 proposal to the Senior Equality and Diversity Lead at hr.support@bsmhft.nhs.uk . 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.					

Full Equality Analysis Form

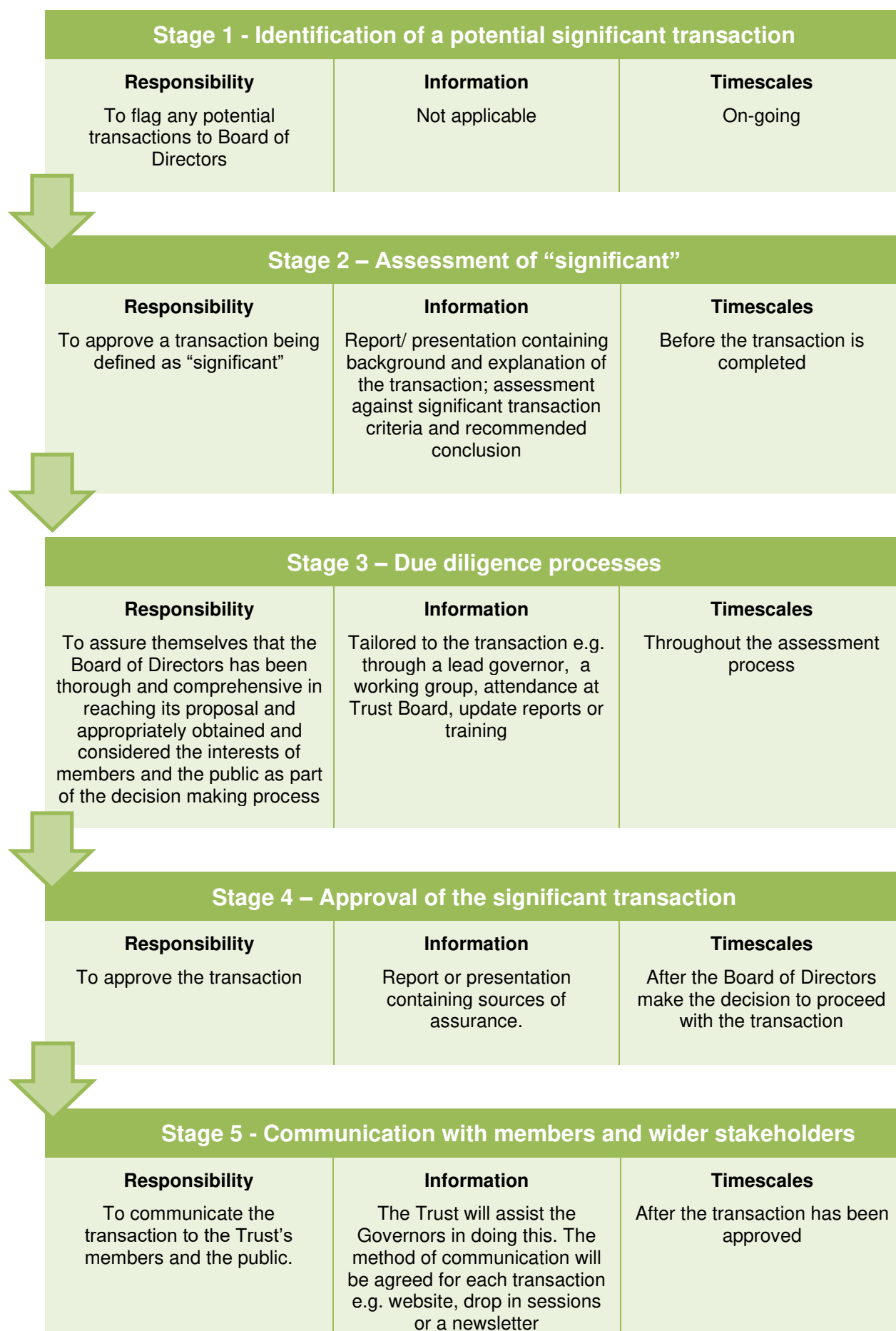
Title of Proposal	Significant Transactions Policy Review		
Person Completing this proposal	Abi Broderick	Role or title	Head of Planning and Development
Division/Department	Strategy, People and Partnerships	Service Area	Planning and Development
Date Started	October 2019	Date completed	
Looking back at the screening tool, in what areas are there concerns that the proposal treats groups differently, unfairly or disproportionately as a result of their personal protected characteristics?			
No concerns raised			
Summarise the likely negative impacts		Summarise the likely positive impact	
Not applicable		Not applicable	
What previous or planned consultation or research on this proposal has taken place with groups from different sections of the community?			
		Please provide list of groups consulted.	Summary of consultation / research carried out or planned. If already carried out, what does it tell you about the negative impact?
Group(s) (Community, service user, stakeholders or carers)			
Staff Group(s)		Policy consultation group – ADs/CDs	
What up-to-date information or data is available about the different groups the proposal may have a negative impact on?			
Not applicable – no negative impact identified			
Are there any gaps in your previous or planned consultations, research or information? If so are there any other experts, groups that could be contacted to get further views or evidence?			
Yes		No	
If yes please list below			
As a result of this Full Equality Analysis and consultation, what changes need to be made to the proposal? (You may wish to put this information into an action plan and attach to the proposal)			
Not applicable – no negative impact identified			

Will any negative impact now be:					
Low:		Legal:		Justifiable:	
Will the changes made ensure that any negative impact is lawful or justifiable?					
Not applicable – no negative impact identified					
Have you established a monitoring system and review process to assess the successful implementation of the proposal? Please explain how this will be done below.					
As above – EIA will be done individually for any significant transactions that take place					
Action Planning: How could you minimise or remove any negative impact identified even if this is of low significance?					
Not applicable – no negative impact identified					
How will any impact or planned actions be monitored and reviewed?					
Not applicable – no negative impact identified					
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					

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

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 NHSI reporting thresholds
- Assets e.g. buildings - 10% in line with NHSI reporting thresholds
- Capital e.g. market value of target organisation – that meets the capital business case reporting threshold of £15m

Whether it involves a volatile income e.g. Payment by Results

Is it a loss making contract or acquisition

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 NHS Improvement

Does it involve a new CQC registration

Will non NHS income be increased by more than 5%

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

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	<p>Tender due diligence checklist</p> <p>Internal audit review of significant risks highlighted during tender process for which mitigations are not possible</p> <p>Certification that price covers cost and includes margin from Executive Director of Finance</p> <p>Formal due diligence report</p>
Considered the implications of the proposed transaction on the Trust's risk assessment and risk ratings, having taken full account of reasonable downside sensitivities	<p>Certification from Executive Director of Finance</p> <p>Formal due diligence report</p>
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	<p>Partner due diligence checklist</p> <p>Formal due diligence report</p>
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	<p>Certification that service is deliverable and non impacting from Executive Director of Operations</p> <p>Equality impact assessment</p> <p>Internal audit review of significant risks highlighted during tender process for which mitigations are not possible</p>
Received appropriate external advice from independent professional advisors with relevant experience and qualifications (if required)	<p>Executive Summary from External Advisors Report</p>

Evidence that the Board of Directors has:	Potential sources of assurance (not an exhaustive list)
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
Resolved any accounting issues relating to the transaction and its proposed treatment	Certification from the Executive Director of Finance Formal due diligence report
Address 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	Confirmation from Clinical Senate
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

Evidence that the Board of Directors has:	Potential sources of assurance (not an exhaustive list)
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