

NHS England – Updated Transaction Guidance

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25 October 2022

NHS England has published (October 2022) new guidance *Assuring and supporting complex change: Statutory transactions, including mergers and acquisitions*. Click [here](#) for the new guidance and [here](#) for its appendices.

The new guidance sets out how NHS England will assure and support proposals for intra-NHS mergers, acquisitions, dissolutions, separations and transfers. It should be read with the changes to the National Health Service Act 2006 and (for NHS foundation trusts) draft new guidance for councils of governors (CoG) that NHS England published for consultation.

Key points are:

- NHS England's overall test is whether the deliverable of a transaction will materially outweigh the costs and risks
- Assessing benefits is a two-stage process, incorporating review of a strategic case and then full business case
- NHS England takes a broad view of the term 'benefits', which may be contrasted with the historically tougher approach that the Competition and Markets Authority (CMA) applied to merger review
- ICB support for a transaction is now a key test - trusts and system partners must work together constructively in the development of transaction proposals
- CMA merger review will still apply to mergers or joint ventures involving an NHS provider and an independent provider (including GP practices)
- Secretary of State approval is now required for all transactions
- The draft new CoG guidance includes CoG approval for transactions that may not immediately benefit the NHSFT itself but is expected to benefit the wider ICS population

The revised Guidance reflects the changes brought about by the Health and Care Act 2022. Where trusts have already started or in the process of a transaction assurance process under the previous guidance, please do get in touch so we may support you in transferring from the old Guidance to the new Guidance, where applicable.

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Contact

Mark Hickson

Head of Business Development

onlineteaminbox@brownejacobson.com



+44 (0)370 270 6000

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