

# Dalton Review

Practical Checklists

# How to use this guide

This document has been produced as a supporting guide to the Dalton Review. The information contained in this document is intended to be used as a practical, user-friendly version of the supporting evidence packs to help Trust Boards, Executive Teams and other senior managers and clinicians to think through each of the organisational forms and their application to their own organisation.

This is a roadmap and the information contained within this guide is not exhaustive, nor is it designed to replace current guidance and should not be used in the place of advice from tax or legal professionals. The information has been gathered over the period of May to September 2014 and is current as of December 2014.

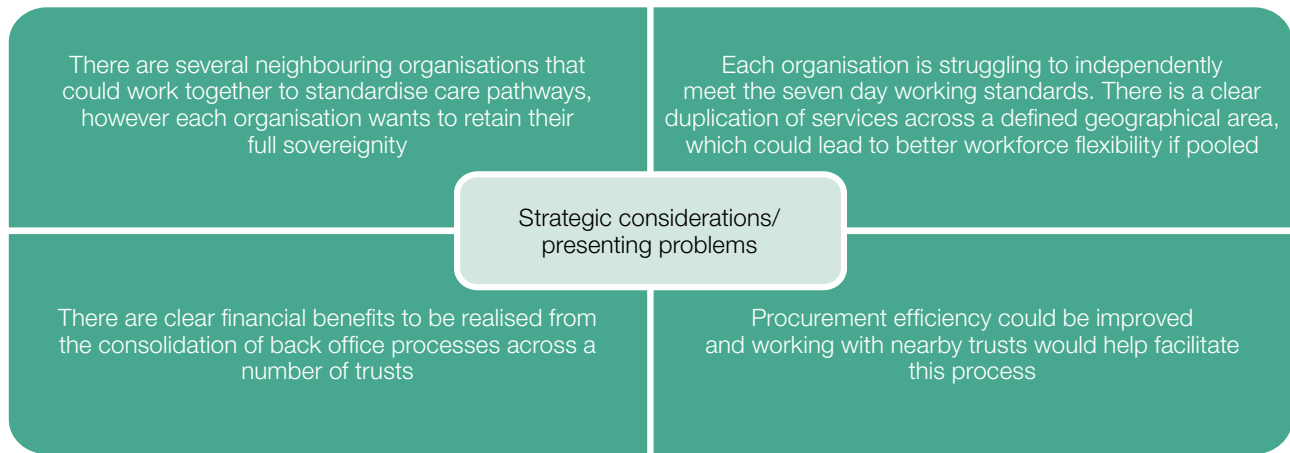
This pack contains practical checklists of information that Boards should consider for their outline business case, key issues for consideration and a reminder of the main approvals and legal questions that may need to be addressed.

We hope it is a helpful guide to inform your thinking and would welcome any comments or feedback, which will inform any further iterations or development of wider materials.

The Dalton Review Team  
daltonreview@dh.gsi.gov.uk

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# Federations – Practical Checklist



## Federations: Key Questions

### Outline Business Case

#### Type of Federation:

- What is the precise presenting problem that the federation is looking to address?
- How will the federation address this problem?
- What type of federation will be formed and what will be shared?
- What is out of scope?
- If legal documentation is required, have other forms been considered first?

#### Alignment of purpose:

- Will the partners' contributions to the federation be equal?
- Do all parties in the federation have complementary objectives and share a view of the nature and scope of its activities?
- Is there the leadership capacity and capability required to execute the federation?
- Does the Partnership Board have representation from all members on it?

### Key Issues for Consideration

#### Legal Considerations:

- How will the functions undertaken by the central body be resourced?
- Have the exit mechanisms for the federation been considered in detail?
- Has there been sufficient consideration of what legal mechanisms – beyond a memorandum of understanding – might be required for service change or back office consolidation?

#### Financial Considerations:

- Have the potential costs of the transaction been established?
- Are Directors of Finance signed-up to the fact that there might be an upfront cost to formation?
- What are the arrangements for sharing the surplus or deficit generated by the new entity between partner organisations?
- A clear line of clinical and organisational accountability must be established if services are being shared in the federation.
- Is the risk/gain share arrangement clear?

### Approvals and Legal Questions

#### Staff:

- Will staff be employed by the federation and if so will TUPE apply?
- Have you engaged with staff over any change that might alter job plans and involve travel?

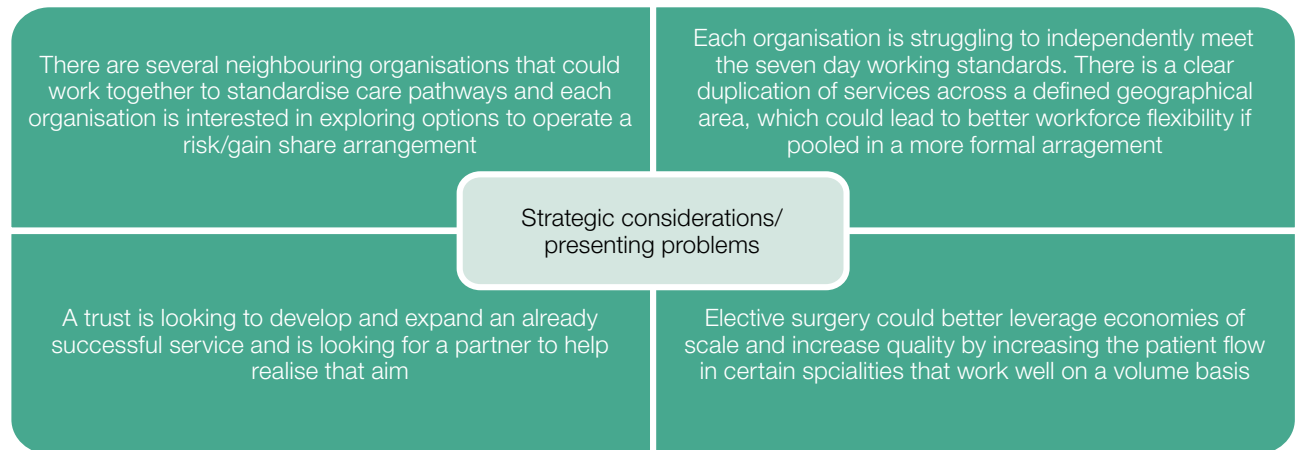
#### CMA/Monitor:

- Has there been early consultation with the CMA and Monitor regarding the potential application of competition law such as market share or change of management control implications?
- Is there a clear patient benefit case in terms of clinical services?

#### CQC:

- If created as a new legal entity (not a requirement but an option), a federation must register in its own right. If not, it is included in providers' existing registration.

# Joint Ventures – Practical Checklist



## Joint Ventures: Key Questions

### Outline Business Case

#### Alignment of purpose:

- What defined contribution does each partner bring to the venture?
- How is the presenting problem best addressed by the involvement of new parties in the arrangement?
- Do all parties in the venture have complementary objectives and share a view of the nature and scope of its activities?
- Is the risk/gain share arrangement agreed?

#### Contractual considerations:

- What is the precise presenting problem that the joint venture is looking to address?
- Will this be a new legal entity or contractual? Have all different forms of joint venture been considered: LLP, special purpose vehicle (SPV), etc.?
- Will the partners' contributions to the venture be equal?
- Have you established the exact responsibilities of the management board/Directors?

### Key Issues for Consideration

#### Costs:

- Have the potential costs of the transaction been established?
- Are there estates/asset implications? Will a charge be levied to the new entity?
- Will external advice be required to execute the transaction?
- What is the risk/gain share? Will surplus be distributed evenly for service reinvestment?

#### Management:

- Will the JV have sufficient freedoms to be able to carry out its activities on a day-to-day basis without the direct involvement of any participant?

#### Failure/Dispute:

- Have the exit mechanisms for the joint venture been considered in detail? And are there clear trigger points?
- Have you established equal division of risk?
- A clear line of clinical and organisational accountability must be established.
- Has the method of dispute resolution and deadlock breaking been considered?

### Approvals/Legal Questions

#### CMA/Monitor/CQC:

- Has there been early consultation with the CMA and Monitor regarding the potential impact of competition law? Market share and change of management control should be considered and potentially self-assessed.
- Is the value more than 10% of each Foundation Trust partners' assets, revenue or capital? If yes, Monitor need to be notified.
- If a new legal entity, this must register in its own right. For 'pooled' sovereignty, it is included in provider's existing registration.

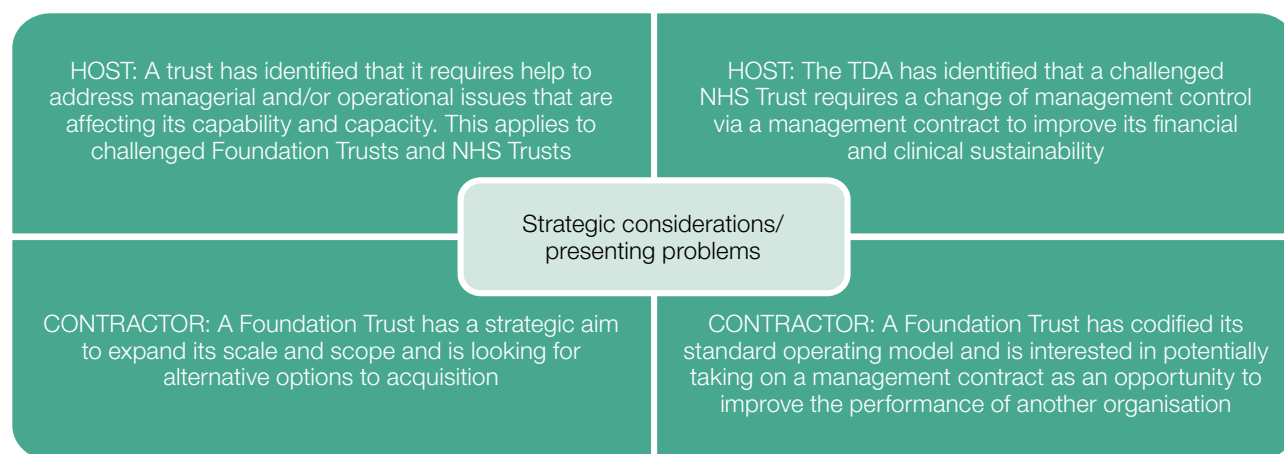
#### Tax Implications:

- Tax advice is crucial as the potential tax implications varies dependent upon the structure of the joint venture. Seek advice early on particularly if considering an LLP.
- Any transfer of property to a SPV will require early consultation with HMT as stamp duty land tax may apply.

#### Staff:

- Who will employ the staff? If it's the joint venture then TUPE may apply. Training of clinical staff may be affected if the training institutions do not recognise the new entity.

# Management Contract – Practical Checklist



## Management Contract: Key Questions

### Outline Business Case Questions

- A change of managerial control is considered to be the right solution for an organisation to achieve clinical and financial sustainability in the medium term.
- The organisation does not have structural issues that would prevent the contractor from improving the performance.
- The organisation requires support to standardise processes and improvement methodologies.

### Key Issues for consideration by potential contractor

#### Financial incentives:

- NHS Tariff prices likely to remain. Contractual constraints such as asset locks may mean transformational changes/the sale of assets is not possible, which could affect incentives.
- Is there access to interim financial support?
- Is the contract duration long enough to ensure time to turn-around the organisation?
- Is there an incentive payment for the contractor should certain performance target be met within particular time periods?

### Identifying a contractor

- Are the proposed contractor and managed organisation culturally compatible?
- The contractor should have the specific capabilities and expertise (financial control, standardisation, consolidation) to address challenges in the managed organisation.
- Can the operational and managerial methods of the contractor be transferred to a different organisation? Isolated/small sites may require different skills than larger urban sites.
- What proven experience and background does the contractor have?
- What level of commitment is expected from the contractor i.e. financial risk/gain share?
- Will this be on a management fee or performance related payment contract?

### Engaging the local community and staff

- How will the clinical and non-clinical staff, Governors and the local community be involved in the decision and engaged by the contractor?
- Is there appropriate support at senior levels in the managed organisation?
- What is the exit strategy from the organisation? What will this mean for the staff?

### Approvals and Legal Questions

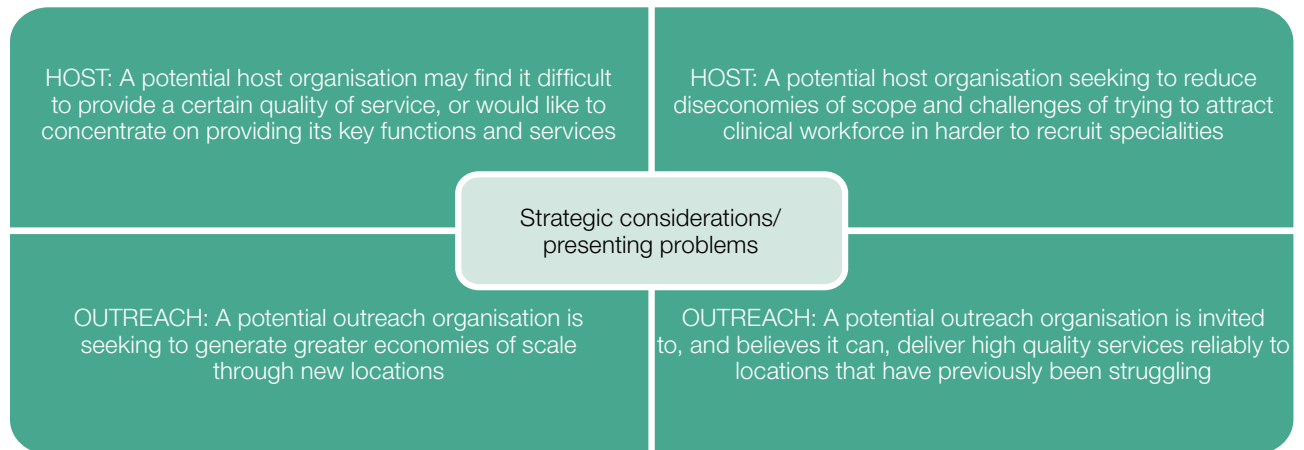
#### Contract details regarding finance and operational autonomy:

- Is the contract clear on the extent of any permissible service and back office changes?
- Is this flexibility sufficient to make the improvements required?
- Is any service transformation required supported by the local Clinical Commissioners?
- What are the service continuity plans if the arrangement fails financially?
- If the host is a Foundation Trust, how are the Council of Governors being engaged and what provisions have been made to ensure new Governors are clear on the arrangements?

#### Legal process for adopting a management contract different in FTs and NHS Trusts:

- NHS Trusts that enter into a management contract for a significant contract duration are still classed as NHS Trusts. There is provision in the legislation (s179(3) of the 2012 H&SC Act) for these organisations to remain an NHS Trust at the end of the contract and for three years following the contract end date, even after the repeal of the NHS trust legislation.
- There are limits on the types of arrangements that can be put in place for FTs given the different statutory framework in place, however it is still possible for FTs to be managed in this way.

# Service-level Chains – Practical Checklist



## Service-level Chains: Key Questions for Outreach Organisations

### Outline Business Case Questions

- Are the service delivery model/standard operating procedures codified and replicable at an external location?
- Is there sufficient executive and clinical capacity to undertake expansion of activities and performance monitoring?
- Has there been an approach by a potential host(s) to have services delivered by your organisation?
- Have you evaluated/undertaken due diligence to understand the current performance, clinical workforce configuration, activity and any challenges faced by the service?
- Do you understand the local health economy needs and can you negotiate with key stakeholders?
- Is your brand your unique selling point? Would you use your own or the host brand?

### Key Issues for Consideration

#### Levels of operational control required:

- To operate the service line, certain levels of operational control needed in satellite bodies.
- Has the level of operational control been agreed?
- Are protocols and agreements in place for if patients cross the boundary into the host organisation (see patient liability)?

#### Different IT and patient data systems:

- Do you share any IT systems? How can they be linked? How will you access pathology and PAS records?
- Who owns the data and activity for purposes of PBR, performance targets and quality?

#### The brand requirements:

- Do patients associate your brand with high quality care? If more appropriate can you brand your services with the local provider?
- Are there any brand reputation problems you or the host may face?
- Do staff associate your brand as high quality and a good organisation to work for?

#### Staff

- Will the staff move to be employed by the outreach organisation? Are there TUPE implications for staff?

### Approvals and Legal Questions

#### Patient liability

- It can be unclear if/when patients cross over the boundary between outreach and host; whether host and outreach share staff or otherwise provide the service jointly; or if administration is or is not provided by host.
- The contract needs to detail what happens to patient liability in each of these situations.
- Providing all admin and staff through the outreach organisation helps in mitigating patient liability issues.

#### Malpractice insurances:

- Corporate malpractice insurance should cover services provided for others, and individuals should have malpractice insurances.
- Host organisation CNST (The Clinical Negligence Scheme for Trusts) may not cover outreach organisation.

#### Registration of the service:

- CQC inspects the service-level chain as part of the outreach organisation.
- Where services are delivered on an occasional basis (mobile/remote/2-3 per week), then services are registered as run from the headquarters.
- Has this been clarified with CQC?

## Service-level Chains: Key Questions for Host Organisation

### Outline Business Case Questions

- Are there currently services that you are struggling to attract substantive clinical staff or are finding it a challenge to meet performance targets or provide to a high quality standard?
- Do you want to concentrate on your key services and outsource fringe or difficult to recruit to services?
- Are there strong providers for particular services in your area or that you are aware of? Would these services be able to provide access to better technology or treatments for your population?
- Do you want to increase the number of services you provide or deliver new services?
- Do you want to increase your income through economies of scope and potential rental income?
- Can you identify an external service provider for that service and how they would benefit from the arrangement?
- Can you provide adequate facilities and/or equipment for the service-provider if needed?
- Would patients benefit from new/additional services offered?

### Key Issues for Consideration

#### Setting up sustainable, long-term agreements, delivering continuity in care:

- How long do you plan to contract with the outreach provider?
- What is the plan for transferring patient care if service provider changes or exits/the contract is not renewed?
- What is the reputational and operational risk to you if the service provider does not deliver adequate services/fails financially?
- How do patients access the service? Is this run independently of your organisation or are the PAS records updated on both the Trust system and the outreach provider system?
- Do you need to buy any additional IT such as a clinical portal to allow the service provider access to your IT records such as PAS and pathology?

#### Local staff/consultants need to be engaged:

- Will the staff be TUPE'd across to the new provider? Have you consulted on this change and the potential impact on staff?
- Will local consultants lose revenue streams? Will this impact need to be managed?

#### A good cultural match and local knowledge important for success:

- What links will you maintain with the provider, if any? Do you want to assign local integration managers or otherwise facilitate the outreach organisation in practical and cultural issues?
- Is the contractor a good match?

### Approvals and Legal Questions

#### Patient liability

- It can be unclear if/when patients cross over the boundary between outreach and host; whether host and outreach share staff or otherwise provide the service jointly; or if administration is or is not provided by host.
- The contract needs to detail what happens to patient liability in each of these situations.
- Providing all admin and staff through the outreach organisation helps in mitigating patient liability issues.

#### Malpractice insurances:

- Corporate malpractice insurance should cover services provided for others, and individuals should have malpractice insurances.
- Host organisation CNST (The Clinical Negligence Scheme for Trusts) may not cover outreach organisation.

#### Financial impact if service-level chain fails:

- Have you considered the impact challenges in the outreach organisation could have on your finances (e.g. clinical negligence claims) and are you insured against these?
- Seek clarification from CNST (The Clinical Negligence Scheme for Trusts).

#### Registration of the service:

- CQC inspects the service-level chain as part of the outreach organisation.
- Where services are delivered on an occasional basis (mobile/remote/2-3 per week), then services are registered as run from the headquarters.
- Have you updated the CQC?

#### Key Links:

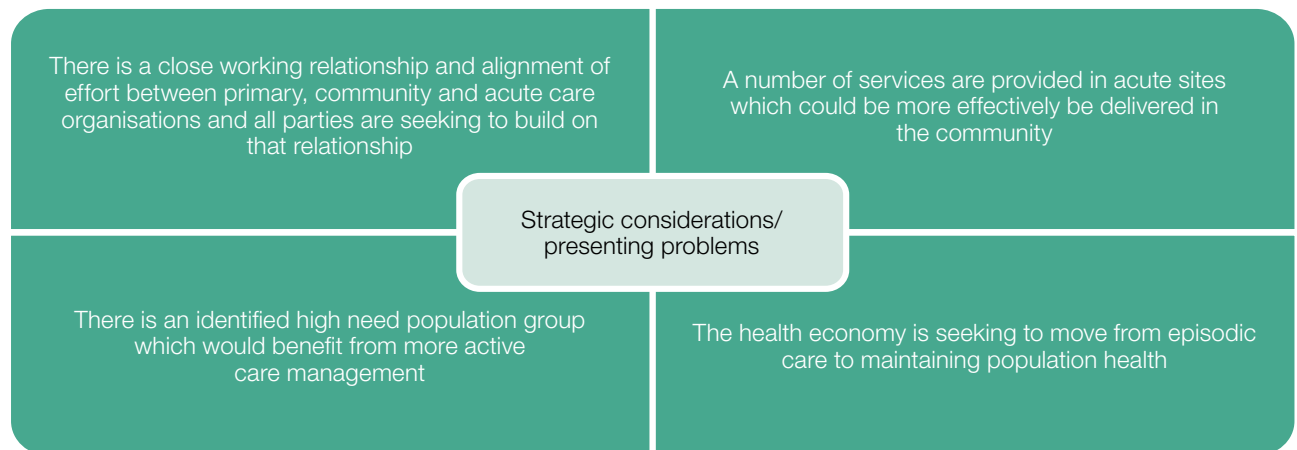
NHS Litigation Authority for CNST: <http://www.nhs.uk/Claims/Pages/Clinical.aspx>

NHS Provider Licence <https://www.gov.uk/government/publications/the-nhs-provider-licence>

CQC registration <http://www.cqc.org.uk/content/guidance-providers>



# Integrated Care Organisation – Practical Checklist



## Integrated Care Organisation: Key Questions

### Outline Business Case

- A population health approach would better support health economy sustainability.

### Key Issues for Consideration

#### Contracts and pricing

- Are you exploring alternative payment and contracting mechanisms with commissioners?
- Are you intending to form the ICO/ACO through contracts or mergers?
- Do you have sufficient expertise to manage contracts between partner organisations?
- Can you agree a pricing structure which is acceptable to all partners? It is important to ensure savings made by one part of the system to not negatively affect another. This can be mitigated through contract pricing design.
- Do you have sufficient data on real costs of procedures and patient flows?

### Engaging and consensus building

- Have you engaged with all relevant local providers? Are they signed up to the proposal?
- Are local commissioners supportive?
- Do you have a plan to change staff behaviours to align with the new organisational form?

#### Infrastructure

- Is the infrastructure available to deliver more services out of hospital? This may include primary and community facilities.

#### Data and IT

- Do you have a strategy or system for aligning IT and information systems?
- Do you have compatible data systems for sharing patient data? Do you need a middleware or clinical portal solution to enable this?
- Are you clear how you will stratify your population?
- Do you have sufficient data on your local population?

### Workforce

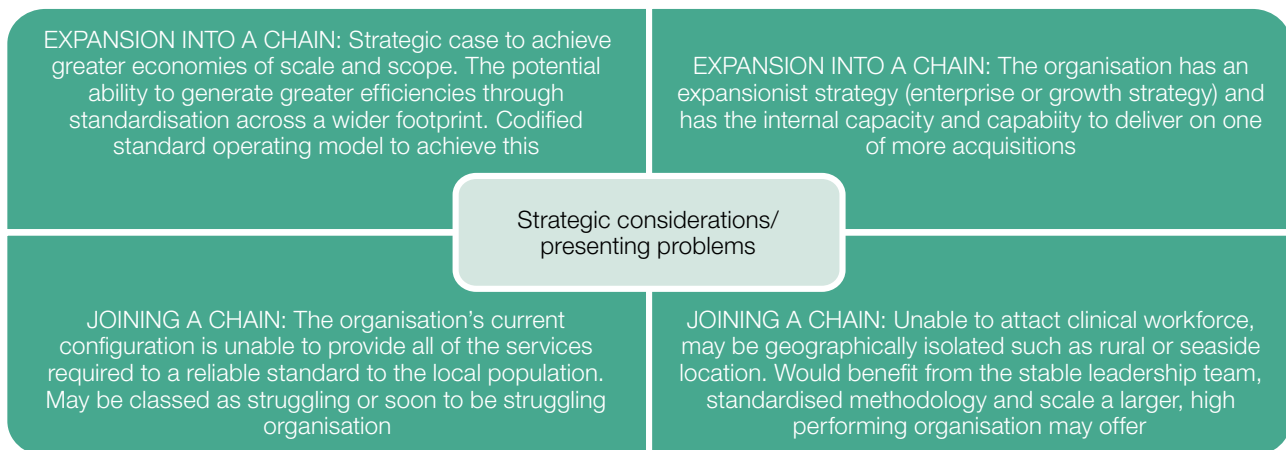
- Are your teams co-located?
- Who will employ the staff? Is this a Lead Provider or Alliance contract? Have you consulted staff on the change?
- Are there TUPE implications?
- Does your workforce have the right skill mix to deliver integrated services?
- Are appropriate training programmes available?

### Approvals and Legal Questions

- Are you familiar with Monitor's guidance on integration?
- Does the ICO include collaboration between providers of similar services? This may trigger competition concerns. In most cases, collaboration designed to achieve integrated care is unlikely to raise competition concerns.
- Are you clear on how the CQC regulation will apply to the ICO?



# Multi-Service Chain (Foundation Group)/ Multi-site trust – Practical Checklist



## Multi-service Chain (Foundation Group)/Multi-site Trust: Key Questions

### Outline Business Case

#### Finances (EXPANSION):

- Does the hospital have the finances to invest in the assimilation of a new hospital?

#### Leadership (EXPANSION):

- Is there the leadership capacity within your organisation to be able to manage the acquisition of one or more new hospitals?
- Is there the leadership capability within your hospital to manage the acquisition of one or more hospitals?

#### Strategy (EXPANSION)

- Have you a clear sense of what value your chain will add to the local health economy and population of the acquired site?
- Will your chain be a contiguous or a non-contiguous chain?
- If you have identified a non-contiguous chain, then how will you address issues from geographical separation of the institutions?

#### Strategy (JOINING)

- How will joining a chain quantifiably improve your ability to provide services to your local population?

### Key Issues for Consideration

#### Standardisation:

- Do you have a set of standardised KPIs that you will be able to easily replicate in a new institution?
- What is your strategy for inducting the new site into your methods of operation?

#### Culture:

- Is there a clear strategy for cultural integration? This is a crucial factor in the success or failure of an acquisition.
- How will you work with the new hospital(s) in your group's management in order to ensure assimilation?

#### Estates:

- How will estates across a number of different sites be managed so that they are flexible and responsive to need?

#### Accountability:

- How will your structure of accountability look? This is especially pertinent if you are acquiring sites over a large geography.

### Approvals and Legal Questions

#### CMA/Monitor:

- Does the transaction give rise to a change of control over the activities of an enterprise?
- Transactions or agreements which would result in a change of control over all or part of a provider's activities, and which are above certain thresholds, may be subject to merger review.
- It may be appropriate for an NHS multi-service chain to operate under a single license from Monitor.

#### CQC:

- A trust is treated as a single entity for the purposes of regulatory action.
- Chain registers as a corporate body with a registered manager (typically the Hospital Director) nominated for each individual site that delivers services.

#### Other

- Have you worked with local commissioners to establish the impact of service change?



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