NHS Improvement

Commercial options guidance

Corporate services productivity programme

July 2018

Introduction (1/2)

Methods of delivering corporate services in the NHS have changed little in the last 20 years compared to other sectors. This limited modernisation coupled with the variation in delivery methods, and therefore outcomes, contributed to NHS provider trusts spending £4 billion on corporate services in 2016/17.

Lord Carter's review, *Operational productivity and performance in English NHS acute hospitals: Unwarranted variations*, published in 2016, investigated whether the NHS gets the best value (defined as the product of quality of care and the efficiency with which it is delivered) from its annual budget. It concluded that the NHS could save £5 billion a year if it addressed the significant and unwarranted costs and clinical practice variations.

The report recommended that trusts should rationalise their corporate functions to use resources in the most cost-effective manner; the Secretary of State for Health accepted all the report's recommendations in March 2016.

From talking to function leadership groups (eg Future Focused Finance), trust directors and heads of corporate services functions, we found they agree that the way corporate services are delivered needs to change to benefit from modernisation.

They recognise that this means taking advantage of available economies of scope and scale. Most are asking for the direction and future operating model to be carefully guided on their behalf and for the system-wide obstacles to be removed centrally. This gives them the opportunity to deliver and receive quality services in line with national expectations and direction.

A collaborative delivery model has inherent challenges for trusts, which include forming the desired operating model and the governance to manage it. These changes need to happen at a time of constraints on capital and internal resources. We have designed this toolkit to help.

We compiled this guidance using subject matter expertise and feedback from trusts that have been through the process. We will update it regularly to reflect new information.

Introduction (2/2)

This guide provides practical guidance on corporate services commercial options.

The document covers:

- a range of shared service models that may be considered by a trust
- setting up shared services is one of the options available to trusts to both improve the quality and reduce the cost of their corporate services provision.

It is a good starting point for a trust to understand what options are available to it and their differences.

All options are valid, but depending on the strategic intent of the trust, particular models may be more appropriate to specific local contexts.

This paper should not be taken as legal advice. Setting up corporate services is complex and legal advice should be sought.

Useful resources

Please refer to:

- *Governing a corporate services redesign project*
- *Purpose and design principles*

Summary: Model descriptions

Six of the most commonly used options for corporate services are described below. Some options can be implemented either by a single trust or with a collaborative approach, where a group of trusts enters into the model together.

① Fully outsourced shared service centre

One or more trusts procure services from a single third-party provider. This process requires notice to be issued to the market through the OJEU (if the value of the requirement is above the relevant threshold in the Public Contracts Regulations 2015) and a competitive process to be run. A trust solely enters into the agreement with a third party or, provided it can act as the central purchasing body, enters into a shared contract arrangement or framework agreement that allows other trusts to procure under that shared contract or framework.

② Outsource to an existing public/private joint venture (JV)

A trust or group of trusts procures its corporate services from an existing public/private JV that has already been awarded a single supplier shared contract or framework agreement by another public authority. The trust would not need to run a full open procurement process as for model 1. However, if the public/private JV is not the sole supplier, the trust would have to run a mini-competition under the terms of the framework agreement. The trust must comply with the call-off terms and conditions of the existing framework and any pricing that has been agreed.

③ Create a new public/private JV to provide services

A trust or group of trusts collaborate to procure services through the creation of a new organisation in the form of a JV or partnership with a private organisation. The procurement process for selecting the private party must be conducted in line with EU procurement regulations as for model 1. The creation of the JV will need specialist corporate legal advice, including on dealing with governance and conflict of interest that may arise in the model.

④ Use an existing trust's capability to provide shared services

A trust enters into a public-to-public co-operation agreement with another trust or other public authority to deliver services, through running an open procurement as described for model 1. However, a direct award may be available as an exemption and only where all prescribed legal criteria are satisfied (listed in regulation 12 (7) of the Public Contracts Regulations 2015). The criteria include that the co-operation agreement must not be for profit, but lack of profit alone is not sufficient to rely on this exemption. Trusts should seek legal advice where this option is being considered.

⑤ Use another trust's subsidiary to provide shared services

This is similar to model 4 but has the key difference that services are delivered through a subsidiary that is owned by another trust. Provided certain criteria are satisfied, this model allows the subsidiary of a trust to 'sell' to other trusts, unlike in model 4. There are a number of commercial and legal implications when setting up a subsidiary (see the appendix). In this model, the procuring trust must run an open procurement process as described for model 1, so the subsidiary of the other trust may provide the service if it is selected as part of the competition.

⑥ Create a committee in common to provide shared services

Trusts form a committee in common (CiC) to jointly provide the service(s). The CiC is a non-legally binding organisation that enables trusts to work together to create a single shared service operational structure delivering services to its members. It would take responsibility for providing management of the function, but any resources, assets and liabilities would remain under the original provider's ownership.

Criteria definitions

- We have assessed each of the models against the criteria below.
- Please note the low/high benefit definitions.

Criteria	Definition	Low benefit = ○	High benefit = ●
Level of standardisation	Level of standardisation required to implement model	High level of bespoke processes diminishes benefits by lowering efficiency and effectiveness	High level of standardisation means alignment with industry standard processes and systems
Cost to implement	The total cost to implement the new model including procurement costs	High cost to implement	Low cost to implement
Anticipated level of savings	Level of savings expected	Low levels of expected savings	High levels of expected savings
Time to benefit	How quickly benefits will accrue once implementation is complete	Benefits are accrued slowly	Benefits are accrued quickly
Governance complexity	How complex the governance model is between parties	High complexity	Low complexity
Risk/liabilities transferred	Extent to which financial risk is transferred to the supplier	Low level of risk transferred to the service provider	Majority of risk transferred to service provider; little or no risk remains with the trust
Change capacity required	Level of change to implement the target operating model (TOM) and resources needed	High level of change and resources to implement	Low level of change and resources to implement
Responsiveness of operations	Ability to influence operations and the speed with which this can be done	Low level of responsiveness	High level of responsiveness

Overview of models

- Each model has been assessed against a set of criteria (see page 5 for definitions).
- The analysis below provides an understanding of the differences between the models and their relative benefits.
- The analysis was completed on a respective basis; that is, each model is assessed respectively to others.
- When reviewing models a trust should include the ‘do nothing’ option in its assessment, and review models in line with its strategic goals.
- Variants are: solo approach (a) and collaborative approach (b).

Model		Level of standardisation	Cost to implement	Anticipated level of savings	Time to benefit	Governance complexity	Risk/ liabilities transferred	Change capacity required	Responsiveness of operations
1 Fully outsourced shared service centre	a	◑	◕	◑	◕	◑	●	◔	◔
	b	◕	◑	◑	◕	◑	●	◔	◔
2 Outsource to an existing public/private joint venture	a	◑	◕	◑	◕	◑	●	◔	◔
	b	◕	◑	◑	◕	◑	●	◔	◔
3 Create a new public/private joint venture	a	◑	○	◑	◑	○	◑	○	◑
	b	◑	○	◑	◑	○	◑	○	◑
4 Use an existing trust’s capability to provide shared services		◕	◕	◔	◑	◑	●	◕	◑
5 Use another trust’s subsidiary to provide shared services	a	◑	●	○	◑	◕	●	●	◕
	b	◕	◕	◔	◑	◔	●	◕	◔
6 Create a CiC to provide shared services		◔	◕	◔	◕	◔	○	◕	◕

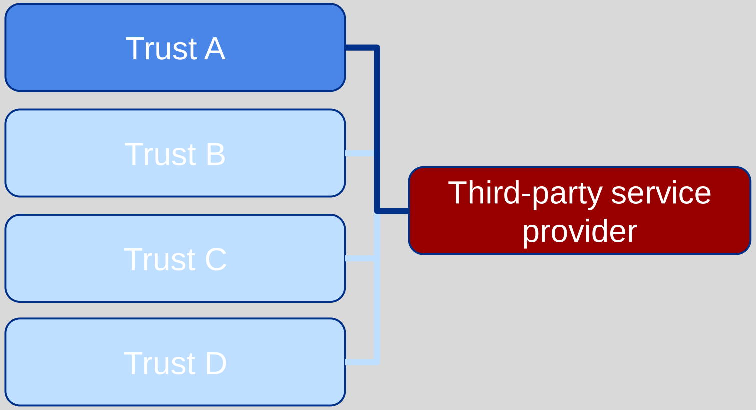
Model 1: Fully outsourced shared service centre (1/2)

Description
One or more trusts procure services from a single third-party provider. This process requires notice to be issued to the market through the OJEU (if the value of the requirement is above the relevant threshold in the Public Contracts Regulations 2015) and a competitive process to be run. A trust solely enters into the agreement with a third party or, provided it can act as the central purchasing body, enters into a shared contract arrangement or framework agreement that allows other trusts to procure under that shared contract or framework.

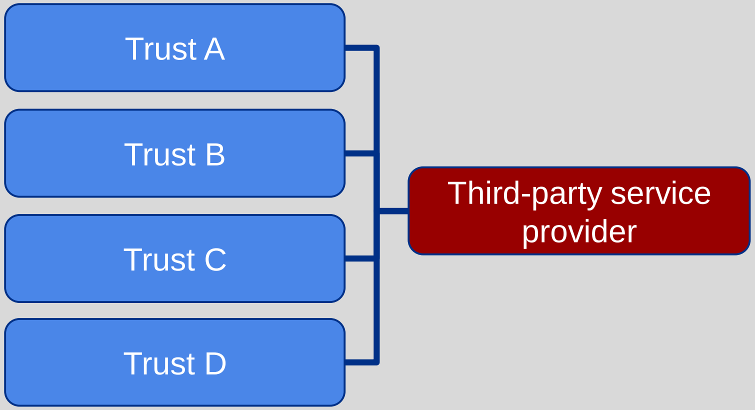
This model is most appropriate when…
- most of the risk needs to be transferred
- high quality, innovative solutions are needed
- a trust does not see value in building a higher quality service in-house
- a trust does not see function as a core service.

Example
University College London Hospitals NHS Foundation Trust (UCLH) has procured a digital transformation partner to co-design improvements to its IT services. The contract was awarded to Atos and procured on a 1:1 basis, although collaboration options are built in – other trusts in the North Central London STP can enter into the contract and procure services.

1a. Solo approach



1b. Collaborative approach



Model 1: Fully outsourced shared service centre (2/2)

	Level of standardisation	Cost to implement	Anticipated level of savings	Time to benefit	Governance complexity	Risk/ liabilities transferred	Change capacity required	Responsiveness of operations
1a	◑	◕	◑	◕	◑	●	◕	◔
1b	◕	◑	◑	◕	◑	●	◕	◔
	High level of standardisation needed if procuring collaboratively, lower when solo	Mid costs to procure and transfer services. Procurement costs shared in option 1b	Mid anticipated savings from a profit-maximising outsourcer. Dependent on arrangements	Ability to smooth benefits; bring benefits forward	Potentially complex operating model	Majority of financial risks and liabilities transferred	Likely to be a high level of change if not currently outsourced	Low responsiveness due to lack of direct control. Option 1b may lower responsiveness if joint decision-making is needed.

Advantages	Disadvantages
Management of back office functions by a private company gives trusts time to concentrate on core purpose	Small degree of control over back office operations once outsourced
Small people resource required to manage contract and performance of supplier	Employees may need to TUPE transfer to the new supplier or be made redundant
Risks and liabilities of back office operations transferred to supplier	Data leaks of any type will still have severe consequences for the respective trusts
Likely to provide high quality innovative solutions to deliver back office operations	Operate on a profit-making business model, thus opportunities for high level of savings are unlikely
Back office processes will need to be standardised across trusts which will simplify business processes	Standardisation may not consider individual needs of trusts
Can incorporate the need for certain organisational core values as part of the prequalification questionnaire (PQQ)	Potential loss of knowledge of business processes

Model 2: Outsource to a public/private joint venture (1/2)

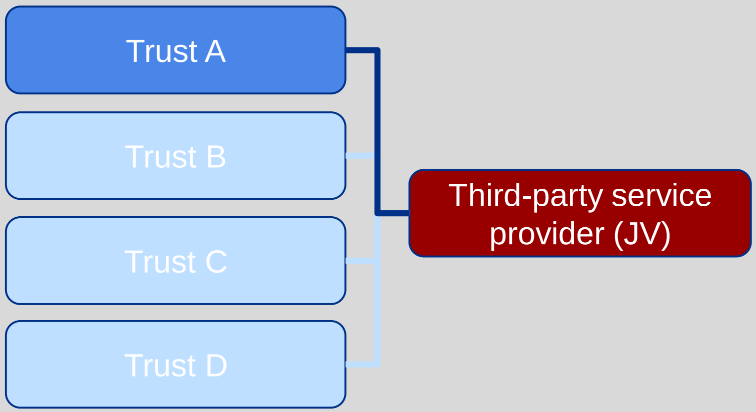
Description
A trust or group of trusts procures its corporate services from an existing public/private joint venture that has already been awarded a single supplier shared contract or framework agreement by another public authority. The trust would not need to run a full open procurement process as for model 1. However, if the public/private joint venture is not the sole supplier, the trust would have to run a mini-competition under the terms of the framework agreement. The trust must comply with the call-off terms and conditions of the existing framework and any pricing that has been agreed.

This model is most appropriate when…
- profit share is attractive
- risk share is acceptable
- a trust wants some control over operations.

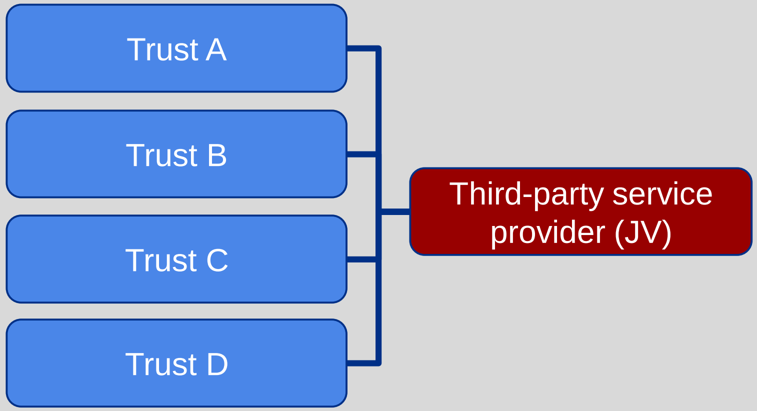
Example
[Capita agrees strategic partnership with CLCH]
Central London Community Healthcare (CLCH) NHS Trust has a contract with Capita to deliver a range of core support services on behalf of the trust, including ICT, HR (payroll and recruitment) and estates and facilities management, followed by the planned delivery of financial invoicing and payment services. The contract will deliver significant savings for CLCH.

See also the NHS lead provider framework: https://www.england.nhs.uk/lpf/lead-providers/

2a. Solo approach



2b. Collaborative approach



Model 2: Outsource to an existing public/private joint venture (2/2)

	Level of standardisation	Cost to implement	Anticipated level of savings	Time to benefit	Governance complexity	Risk/ liabilities transferred	Change capacity required	Responsiveness of operations
2a	◑	◕	◔	◕	◑	●	◕	◔
2b	◕	◕	◔	◕	◑	●	◕	◔
	High level of standardisation needed to outsource. Higher when collaborating	Low/no costs of procurement, mid costs to transfer service	Mid anticipated savings from a profit-maximising outsourcer, but dependent on arrangements	Quicker than 1 due to quicker implementation. Ability to smooth payments over length of contract	Mid complexity if existing JV. Higher complexity in 2b due to collaborative approach	Majority of financial risks/ liabilities transferred	Relatively high level of change if not currently outsourced	Low responsiveness due to lack of direct control. Option 1b may cause lower responsiveness if joint decision-making is needed

Advantages	Disadvantages
Management of back office functions by a private company gives trusts time to concentrate on core purpose	Small degree of control over back office operations once outsourced
Small people resource required to manage contract and performance of supplier(s)	Employees may need to TUPE transfer to the new supplier or be made redundant
Risks and liabilities of back office operations transferred to JV	Data leaks of any type will still have severe consequences for the respective trusts
Likely to provide high quality innovative solutions and access to specialist staff	Operate on a profit-making business model, thus opportunities for savings for the NHS are reduced
Back office processes will need to be standardised across trusts which will simplify business processes	Standardisation may not consider individual needs of trusts
The use of two entities is likely to foster an environment of better working and sharing of best practice	Use of two entities may be problematic if any disputes arise between either party as these could affect service delivery
Use of a JV may be effective where the JV is already performing this service for another trust	JV priorities may change and no longer support needs of trust

Model 3: Create a new public/private joint venture to provide services (1/2)

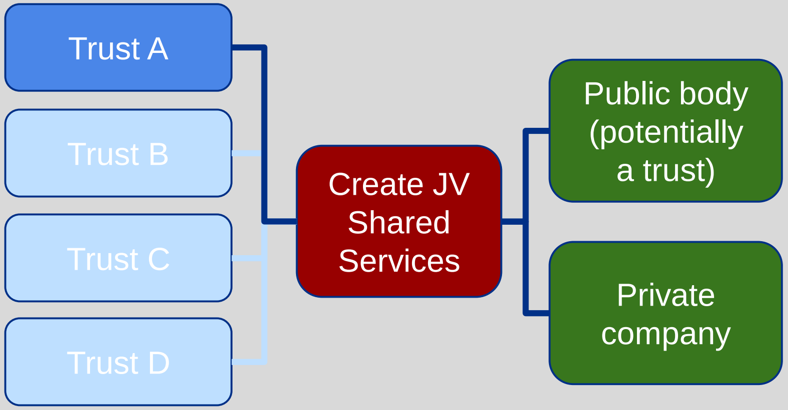
Description
A trust or group of trusts collaborate to procure services through the creation of a new organisation in the form of a joint venture (JV) or partnership with a private organisation. The procurement process for selecting the private party must be conducted in line with EU procurement regulations as for model 1. The creation of the JV will need specialist corporate legal advice, including on dealing with governance and conflict of interest that may arise in the model.

This model is most appropriate when…
- there is no readily available JV to outsource to
- a private company is open to a JV
- profit share is attractive
- risk share is acceptable
- a trust wants some control over operations.

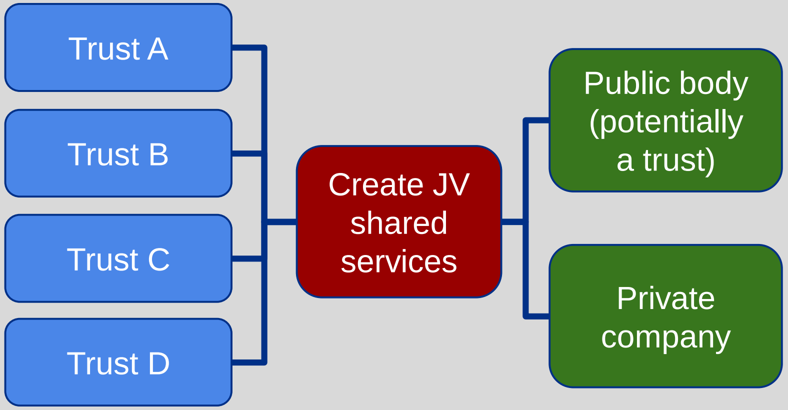
Example

Herts Valleys CCG hosts a shared service that provides HR and organisational development and learning for six CCGs: Bedfordshire, Luton, East and North Herts and Herts Valleys, and West Essex, sharing one HR director.

1a. Solo approach



1a. Collaborative approach



Model 3: Create a new public/private joint venture to provide services (2/2)

	Level of standardisation	Cost to implement	Anticipated level of savings	Time to benefit	Governance complexity	Risk/ liabilities transferred	Change capacity required	Responsiveness of operations
3a	◑	○	◑	◑	○	◑	●	◑
3b	◑	○	◑	◑	○	◑	●	◑
	Mid/high level of standardisation needed across trusts	High cost to create JV and transfer services. Trust bears full cost in option 3a	Savings will be shared across the JV. Single trust takes higher savings in option 3a	Time taken to set up JV and transition services	Operation model complex to create and potential for disputes in running it	Risk/liabilities remain shared across the JV	High level of change to create JV and transfer services	Some control over operation due to involvement as JV partner

Advantages	Disadvantages
Back office operations shared with third-party under the mechanism of JV, providing the trusts more resources	Creation of new JV with third-party service provider likely to be highly complex and time-consuming
Staff resource requirement will be shared between trusts and third-party service provider	Employees may need to TUPE transfer to the new supplier or be made redundant
Risks and liabilities of back office operations shared with JV	Confidential data will need to shared within the JV which could have detrimental consequences if leaked
Likely to provide high quality innovative solutions and access to specialist staff	Any savings/profit made by the JV will be shared with trusts and third-party service provider
Back office processes will need to be standardised across trusts which will simplify business processes	Standardisation may not consider individual needs of trusts
The use of two entities is likely to foster an environment of better working and sharing of best practise	Use of two entities may be problematic if any disputes arise between either party as these could affect service delivery
JV likely to operate standardised tools and processes which can be implemented quickly	Requires management time to oversee operation of JV

Model 4: Use an existing trust's capability to provide shared services (1/2)

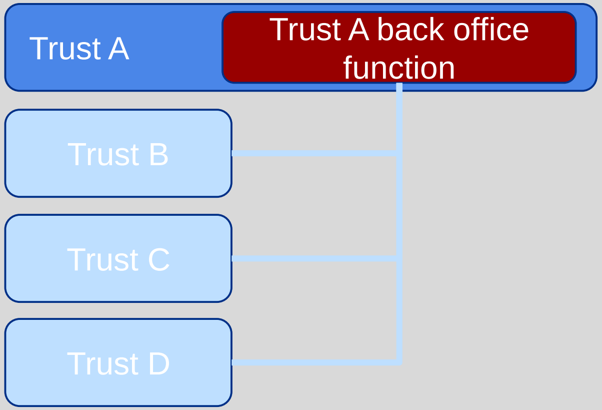
Description
A trust enters into a public-to-public co-operation agreement with another trust or other public authority to deliver services, through running an open procurement as described for model 1. However, a direct award may be available as an exemption and only where all prescribed legal criteria are satisfied (listed in regulation 12 (7) of the Public Contracts Regulations 2015). The criteria include that the co-operation agreement must not be for profit, but lack of profit alone is not sufficient to rely on this exemption. Trusts should seek legal advice where this option is being considered.

This model is most appropriate when…
- a trust is able to deliver high value/low cost services
- a trust is happy to take on additional volume.

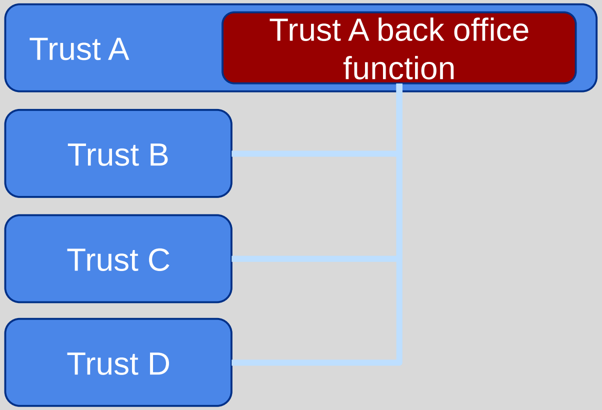
Examples
- Avon Partnership Occupational Health Service is hosted by University Hospitals Bristol NHS Foundation Trust and provides occupational health services to other trusts as well as its own staff.

- 'NHS Payroll Services' is provided by Northumbria Healthcare NHS Foundation Trust which operates as a collaborative, sharing costs with all organisations based on the number of assignments each member has, which creates a fair and transparent model.

4a. Solo approach



4b. Collaborative approach



Model 4: Use an existing trust's capability to provide shared services (2/2)

	Level of standardisation	Cost to implement	Anticipated level of savings	Time to benefit	Governance complexity	Risk/ liabilities transferred	Change capacity required	Responsiveness of operations
4	◕	◕	◔	◑	◑	●	◕	◑
	High level of standardisation needed to create standard processes across trusts	Cost to implement lower than outsource models because jobs stay local. Typically cheaper because no legal set-up costs	Savings depend on efficiency of provider and economies of scale. Anticipated savings likely to be low	No ability to smooth costs, but respectively quick implementation	Fairly simple governance arrangements. Complexity increases with number of trusts	All risks/ liabilities transferred to the provider trust	Small level of change needed to transfer services to provider trust	Low level of control of operations once transferred to provider trust

Advantages	**Disadvantages**
Increases the capacity and capability of the principal trust	Principal trust may need to upscale back office operations which requires funding
Trust found to be most efficient and displaying best value for money can be chosen as principal trust	Employees may need to TUPE transfer to the new supplier or be made redundant
All confidential data will be kept in-house and shared between trusts	Principal trust will inherit all risks and liabilities of back office operations from other trusts
Using one trust to provide services to others will foster an environment in which best practice is adopted in each area of back office operations	Where trusts are using different systems for back office operations, these will need to be integrated into one and data migrated.
Back office processes will need to be standardised across trusts which will simplify business processes	Standardisation may not consider individual needs of trusts
Using an existing trust will ensure that back office operations are consistent across several trusts	Disputes arising between trusts could potentially affect service delivery
There will be no need to create additional legal bodies and the model is fairly simple to implement compared to the other models	Back office operations for all participating trusts may be under the legal control of the principal trust; thus, legal remedies may also be limited

Model 5: Use another trust's subsidiary to provide shared services (1/2)

Description

This is similar to model 4 but has the key difference that services are delivered through a subsidiary that is owned by another trust. Provided certain criteria are satisfied, this model allows the subsidiary of a trust to 'sell' to other trusts, unlike in model 4. There are a number of commercial and legal implications when setting up a subsidiary (see the appendix). In this model, the procuring trust must run an open procurement process as described for model 1, so the subsidiary of the other trust may provide the service if it is selected as part of the competition.

This model is most appropriate when…

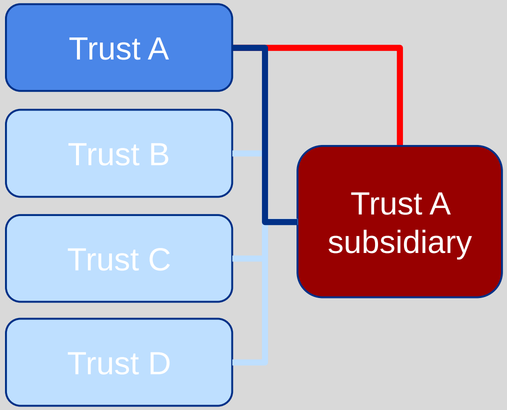
- a trust is able to deliver high value/low cost services
- a trust is happy to take on additional volume
- a trust is able to take on additional risk/liabilities in return for profit.

Examples

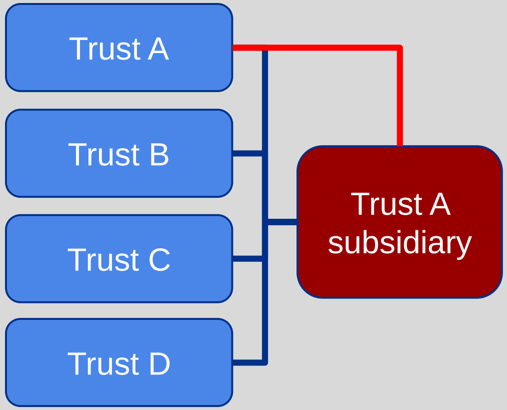
- Northumbria Healthcare Facilities Management Ltd is a wholly owned subsidiary of Northumbria Healthcare NHS Foundation Trust and manages facilities, projects and contracts on behalf of the trust.

- 'ELFS Shared Services' is provided by East Lancashire Hospital NHS Trust and operates as a shared service with a client management model providing financial services to the trust.

5a. Solo approach



5b. Collaborative approach



Model 5: Use another trust's subsidiary to provide shared services

	Level of standardisation	Cost to implement	Anticipated level of savings	Time to benefit	Governance complexity	Risk/liabilities transferred	Change capacity required	Responsiveness of Operations
5a	◑	●	○	◑	◕	●	●	◕
5b	◕	◕	◔	◑	◔	●	◕	◔
	High level of standardisation needed to create standard processes across trusts. If a trust delivers only to itself, it can define the level of standardisation	Cost to implement lower than for outsource models because jobs stay local. Option 5a is the cheapest due to very low set-up costs	Low level of anticipated savings. No wage arbitrage, economies of scale limited. In option 5a small savings unless trust is able to scale to high volume, eg VAT.	If subsidiary can be set up in advance, benefits can be accrued quicker	Creation of subsidiary creates additional complexity	All risks/ liabilities transferred to the subsidiary	Small change to create subsidiary and transfer services. In option 5a it is very simple to set up a subsidiary as change to operations is likely to be small	Option 5a has a high degree of control if subsidiary only provides services to host trust

Advantages	Disadvantages
Creation of subsidiary will create an organisation solely dedicated to providing shared services	Complex structure for how control and power will be divided among participating trusts
Trust found to be most efficient and displaying best value for money can be used as model trust	Employees may need to TUPE transfer to the new supplier or be made redundant
All confidential data will be kept in-house and shared between trusts	Principal trust creating the subsidiary and the subsidiary itself will inherit all risks and liabilities of back office operations
Creation of subsidiary will allow for best practice to be observed when new business processes are being designed	Where trusts are using different systems for back office operations, these will need to be integrated into one and data migrated to the subsidiary
Back office processes will need to be standardised across trusts which will simplify business processes	Standardisation may not consider individual needs of trusts
Use of a subsidiary will ensure that back office operations are consistent across several trusts	Disputes arising between trusts could potentially affect service delivery

Model 6: Create a committee in common (CiC) to provide shared services (1/2)

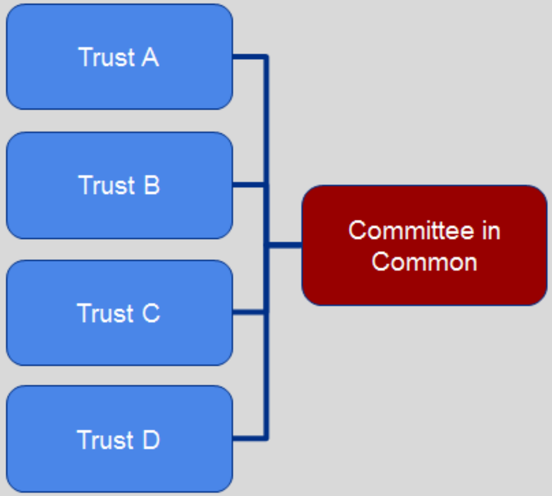
Description

Trusts form a CiC to jointly provide the service(s). The CiC is a non-legally binding organisation that enables trusts to work together to create a single shared service operational structure delivering services to its members. It would take responsibility for providing management of the function, however any resources, assets and liabilities would remain under the original provider's ownership.

This model is most appropriate when…

- goals are aligned across trusts
- there is benefit combined decision-making
- trusts are happy to devolve decision making to a committee.

6. CiC – can make decisions on behalf of two or more organisations



Examples

- Committee in common - Lewisham CCG - brings together health commissioners from NHS Bexley, NHS Bromley, NHS Greenwich, NHS Lambeth, NHS Lewisham, NHS Southwark Clinical Commissioning Groups and NHS England, so that they can agree commissioning decisions and consider initiatives to improve services for patients across south-east London.
- Committee in common - Salford Royal NHS Foundation Trust - discussion takes place about the services provided by the trust.
- Committee in common – Merton CCG - the six CCGs in south-west London (Croydon, Kingston, Merton, Richmond, Sutton and Wandsworth) have agreed to establish a CiC to make decisions as a group.

Model 6: Create a committee in common (CiC) to provide shared services (2/2)

Cost to implement	Anticipated level of savings	Time to benefit	Governance complexity	Risk/ liabilities transferred	Change capacity required	Level of standardisation	Responsiveness of operations
◕	◑	◔	◔	◔	◑	◑	◕
Low set-up costs to create the committee. No procurement costs	Savings are dependent on trust's ability to shift to best in class model	No ability to smooth benefits. Dependent on trust's own ability to reduce cost	Set up of CiC as managing interface	Risks remain with trusts	Change will be within trust to best in class operating model	Standardisation across member trusts, but have ability to influence standardisation	High degree of control through membership of CiC, but must conform to TOM

Advantages	**Disadvantages**
There is no need to create additional legal bodies as existing back office operations will be managed more effectively	All decisions need to be agreed by all members of the CiC which could create an additional layer of bureaucracy
Employees will continue to be employed by their respective trust; thus no need to transfer by TUPE	Duplicating roles may mean running competitions for each of these or making redundancies
All confidential data will be kept in-house and shared between trusts	Any data leaks would be detrimental for all of the associated trusts
Creation of CiC will allow the best in-house services to be used for the different aspects of the back office operations	Where trusts are using different systems for back office operations, these will need to be integrated into one and data migrated to the subsidiary
Back office processes will need to be standardised across trusts which will simplify business processes	Standardisation may not consider individual needs of trusts
Use of a CiC will ensure that back office operations are consistent across several trusts	Disputes arising between trusts could potentially affect service delivery
All savings made from CiC will be kept and shared among the trusts	Could lead to wastage and increased costs if not managed effectively

High level draft programme outline

10-26 months

Duration	Activity
1-2 months	Identify long-term strategic objective of back office operations
2-4 months	Have a clear definition of the scope of services required, detailed requirements, performance metrics, specific activities, how they will be performed and outcomes to deliver long-term strategic objective
1-2 month	Choose the appropriate commercial model and procurement route to deliver the long-term strategic objective for back office operations
2-6 months	Perform procurement exercise and choose supplier
2-6 months	Plan and execute transition from existing to future model
2-6 months	Manage teething problems and new arrangements in accordance with signed contract, key performance indicators and service-level agreements.

Carry out a yearly review to ensure that new arrangements are delivering the level of savings anticipated at the beginning of the programme

Appendix: Additional information on models

Model 1: Fully outsourced shared service centre

- Where a trust is looking to procure services from a private sector third-party provider, it needs to comply with the EU procurement regulations by issuing a notice to the market through the OJEU and running an open, transparent and competitive procurement process. The successful supplier must be selected based on its submitted tender as evaluated against a predefined set of evaluation criteria.
- A trust can enter into an agreement on its own or, where it stipulates in the OJEU notice, into a framework agreement, which enables other trusts to procure under that framework. The latter has the benefit of creating a commercial structure under which other trusts can procure; however, it places a number of obligations and liabilities on the primary trust as it must take on the management, performance and potentially financial obligations and liabilities itself.
- Where a number of trusts wish to collaborate and procure services as a single body, a lead trust or organisation needs to act as the contracting authority, as indicated above.

Model 2: Outsource to an existing public/private joint venture

- A number of shared services frameworks have been set up by NHS England and the Cabinet Office that enable trusts to procure services directly from those organisations without undertaking a separate procurement under procurement regulations. In contracting directly from NHS England and the Cabinet Office, a trust must comply with the terms and conditions (including any pricing) agreed as part of that framework.
- Where a framework has appointed more than one supplier, any trust seeking to procure under that framework should run a further competition between those suppliers. This ensures the services it procures represent value for money and competition is leveraged appropriately.

Model 3: Create a new public/ private joint venture to provide services

- Where a trust or number of trusts wish to collaborate to procure services by creating a new organisation under some form of joint venture or partnership with a private body, it must comply with the EU procurement regulations as set out for model 1.
- This approach requires the contracting authority to invest in the creation of the new company and to play a key role in the management and governance of the JV. For this reason, new JVs should only be created where there is an absolute necessity to deliver the services.

Model 4: Use an existing trust's capability to provide shared services (1/2)

- Under the EU procurement regulations (Regulation 12 (7)), a trust may, under limited circumstances, enter into a co-operation agreement with another trust on a direct basis. For such a co-operation agreement to be valid, the following criteria must be met:
    1. Establish or implement a co-operation agreement between the participating contracting authorities with the aim of ensuring that the public services they have to perform achieve their common objectives.
    2. Implementation of that co-operation must be governed solely by considerations relating to the public interest.
    3. The participating contracting authorities must not perform more than 20% of the activities concerned by the co-operation on the open market.
- Criterion 1 includes that "such co-operation might cover all types of activities related to the performance of services and responsibilities assigned to or assumed by the participating authorities, such as mandatory or voluntary tasks of local or regional authorities or services conferred upon specific bodies by public law. The services provided by the various participating authorities need not necessarily be identical; they might also be complementary" (paragraph 33 of Preamble to EU Directive 2014/24). So, trusts need to satisfy themselves that the activities concerned by the co-operation are at least "related to" the public services or responsibilities that all participating trusts have to perform with a view to achieving objectives in common. It also means that the arrangement must not involve or result in any private provider having advantage over its competitors (eg through subcontracting to the private sector).

Model 4: Use an existing trust's capability to provide shared services (2/2)

- Criterion 2 includes that "The co-operation should be based on a co-operative concept. Such cooperation does not require all participating authorities to assume the performance of main contractual obligations, as long as there are commitments to contribute towards the co-operative performance of the public service in question. In addition, the implementation of the co-operation, including any financial transfers between the participating contracting authorities, should be governed solely by considerations relating to the public interest (paragraph 33 of Preamble to EU Directive 2014/24). So, unlike with a normal service contract, there must be genuine co-operation; that is, participation of all trusts involved and mutual obligations (albeit the element of input can be different) that have mutual synergy effects in the public interest. In most cases, this also includes that any financial transfers should be limited to re-imbursement of costs unless, for example, any surplus is re-invested in the service solely for the public interest.
- In criterion 3, for the determination of the 20% of activities referred to, the average total turnover, or an appropriate alternative activity-based measure such as costs incurred by the relevant trust, with respect to services, supplies and works for the three years preceding the agreement, shall be taken into consideration. Where, because of (a) the date on which the relevant trust was created or started activities, or (b) a reorganisation of its activities, the turnover, or alternative activity-based measure such as costs, are either not available for the preceding three years or no longer relevant, it shall be sufficient to show that the measurement of activity is credible, particularly by means of business projections.
  - For example, a trust delivers a service such as a payroll to itself and the open market (this could be other NHS trusts or private companies). Of that activity, in this case payroll, it must deliver a minimum of 80% to itself and a maximum of 20% to the open market.
  - For the determination of the 20%, the valuation refers to the activities being undertaken (payroll) and not the total turnover of the trust, for example. So, to measure 100% of payroll activity, a trust should calculate the total revenue of internal payroll activities (this would equal cost of delivering these services) plus revenue from external activities.
- Trusts should carry out their own due diligence and apply all the criteria on a case-by-case basis every time this type of public-to-public co-operation agreement is considered.
- These regulations do not apply where there are other exemptions which enable trusts to co-operate with each other, such as through a committee in common approach – see model 6.

Model 5: Use another trust's subsidiary to provide shared services

Some trusts have created subsidiaries for some of their back office services. While this approach may have tax benefits, a prime driver for this structure is that it enables a trust to 'sell' its services to another organisation. This approach has a number of commercial implications that will need to be taken into account when identifying and selecting the preferred model:

- a subsidiary needs to be set up as a legal entity and formally account for its activities and finances
- funds need to be transferred into the organisation to create an asset base
- staff need to be transferred into the organisation under TUPE to deliver the services
- pension arrangements and costs need to be set up and considered
- liability structures and process need to be put in place.

In addition some implications in respect of compliance with EU procurement regulations need to be addressed:

- A trust seeking to procure services from the subsidiary cannot, in principle, directly award this work to the subsidiary as it must comply with the EU procurement regulations. Broadly, this means that it needs to run an open competition for bids, although there are some exemptions subject to certain criteria being met.
- The subsidiary is confined to delivering no more than 20% of its services to an external body, and hence to ensuring its services are dedicated to supporting the controlling trust.
- If the subsidiary does supply more than 20% of services to an external organisation, then the controlling trust needs to run an open procurement process to procure from its own subsidiary.
- Any investment in the subsidiary must come from one of the controlling bodies which may prevent third-party capital investment. If external investment is required/used, then all public bodies procuring from the subsidiary must treat the subsidiary as if it were an independent supplier under model 1.

The use of a subsidiary or private limited company is a viable option to provide services to multiple trusts. However the ownership of the subsidiary and the number of organisations it seeks to provide services to need to be carefully considered.

Model 6: Create a committee in common to provide shared services

- Local authorities have extensively used the model of creating a non-legally binding organisation to jointly procure services, but one that is managed jointly by an appointed committee consisting of members of the bodies wishing to participate.
- This approach, known as a committee in common (CiC), enables trusts to work together to create a single shared services structure delivering services back to its ‘members’. It enables trusts to form collaborative working groups, with a clear governance structures to deliver services across multiple organisations.
- Under this model, participating trusts agree the resource allocation and scope of the services to be provided back to each member. The committee takes responsibility for providing the oversight and management of the function, but any resources, assets and liabilities remain under the original provider’s ownership.
- The CiC model enables trusts to work together in organised groups to create a shared service capability, leveraging off its internal resources and delivering services through the CiC.
- This approach works well where a small number of trusts have a common vision and approach to the management and delivery of shared services. The ideal number of trusts in a CiC is two or three, since larger numbers can create issues for governance, performance management and alignment of roles and responsibilities. A further benefit of this approach is that it allows trusts to embark on the shared services strategy without making the large commitments or investments typically required when setting up a limited company. This approach uses the resources that sit within the organisations, and hence minimises the impact on transfer of staff or redundancies associated with other models.

Communities of knowledge for trusts

- Communities of practice is a concept where groups of people from different organisations can come together to share best practice and engage in a process of collective learning.
- NHS Clinical Commissioners has a forum where best practices are discussed and shared via workshops, forums and national spaces.

Useful links

- NHS Clinical Commissioners forum: https://www.nhscc.org/events/nhscc-hr-od-leads-forum-quarterly-meeting-2/
- University of Oregon paper on community of practice: https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/11736/A%20brief%20introduction%20to%20CoP.pdf?sequence%E2%80%B0=%E2%80%B01

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