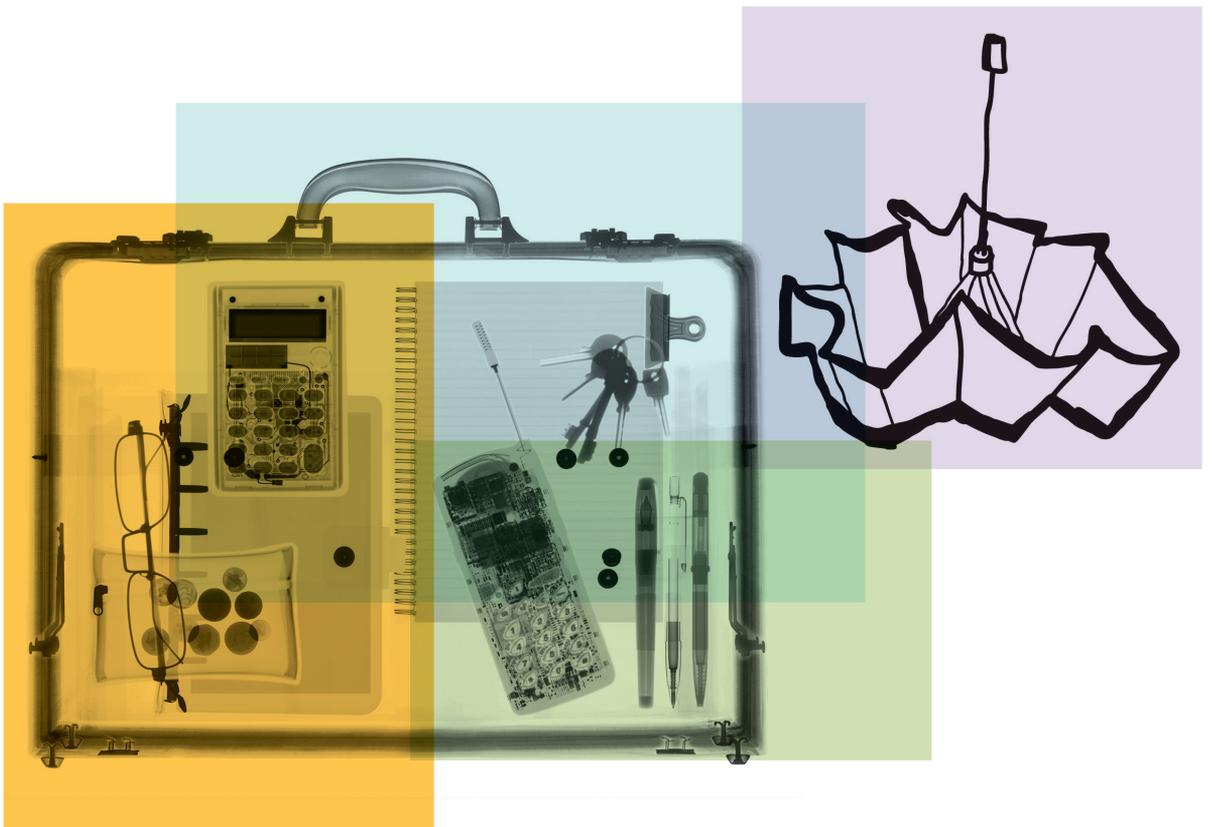
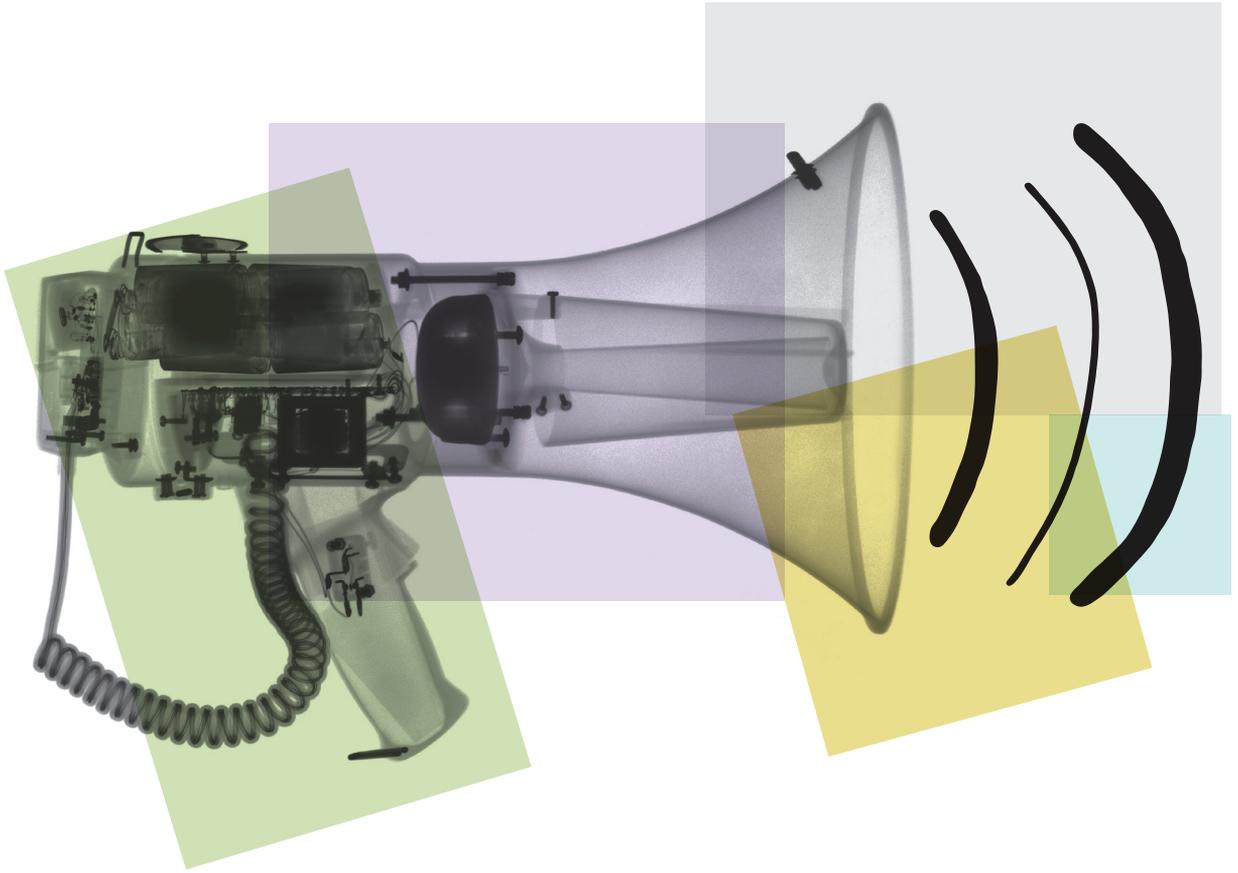


# Delivering efficiencies in your STP

*Consolidating corporate, back office  
and clinical support services*





## A guide for implementation: from planning to completion

Across the country, STP leads have been asked to develop proposals to consolidate corporate, back office and support services, initially on a regional basis, but with the intention to consolidate across larger areas over time.

Some shared services projects have successfully realised savings and work well; but across the NHS there are many examples of projects that have not worked or which have not delivered expected benefits. In our experience there are certain factors that will help your collaboration to flourish. These include:

- clarity about what is being delivered, by whom and to which standards;
- agreeing and documenting clear liability and profit share mechanism;
- being realistic about each organisation's needs and redlines and ensuring genuine alignment on the project goals;
- having the difficult conversations, for example about grounds for termination and expulsion, early in the process;
- allowing sufficient time to prepare and implement the project; and
- good governance so that there is confidence in the delivery, avoiding double running costs.

## Top structuring considerations for your projects

### Options Appraisal and your business case

#### Some options for your project may include:

- do nothing – review and benchmark the current set up across your patch. If the services are already operating efficiently, there may be no requirement to change
- shared services joint venture or collaboration between groups of providers – consolidating services to create the economies of scale and achieve efficiencies, often on a contractual joint venture business
- partnership between groups of providers and a third party, who brings additional expertise and investment
- setting up a jointly owned company – through which the services are delivered
- outsourcing the services to a third party, who provides efficiencies across the health economy

We can assist in the early stages by identifying the best option for your organisation/health economy to achieve efficiencies, by:

- preparing your options appraisal – to assess the long and short listed options and the pros and cons for your health economy
- working with you to prepare your business case in respect of your preferred structure(s) for each project.

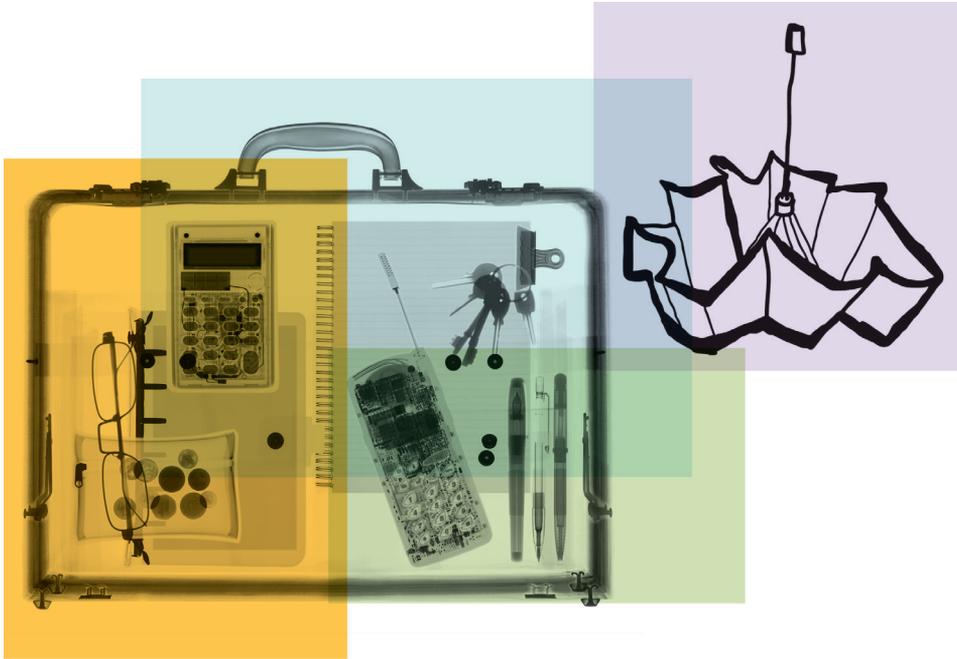
#### Capital and funding

Your options appraisal should also take into account different options for capital funding. This is important given the constraints on NHS capital budgets. This could be through non-government sources or a PPP arrangement. If capital funding is important to your plan, using a separate vehicle may be attractive.

#### Commercial considerations

Once you have decided on your preferred structure for a project, we can produce documentation to implement the project including heads of terms, procurement, contractual or corporate documentation. Key commercial considerations, regardless of the structural approach you have decided to proceed with, will include:

- clarity about service specifications and standards;
- apportionment between the partners of liability arising from service delivery (and whether this is equal or pegged to contributions or usage);
- the management and governance structure;
- structuring commercial relationships with third parties in the clearest way possible (including development of standard form documents to maximise future efficiency of contracting);
- capital and funding;
- having in place the requisite regulatory clearances, approvals and insurance cover;
- staff transfer (and associated pensions eligibility questions); and
- any exit arrangements.



## Vires

The partners will also need to be mindful of vires considerations: whilst foundation trusts have powers to participate in companies, NHS trusts currently do not have the same flexibilities.

The partners may also want to consider a combination of the two overarching approaches, corporate and contractual, tailored to the particular circumstances and requirements of any particular project.

## Procurement

You will need to consider the extent to which EU procurement rules will apply to the provision of any particular services between the joint venture partners. In some cases, the position is that a contract for services will be subject to the procurement rules.

However, there are some helpful exemptions to the procurement rules. Consortia made up of only NHS bodies can structure their joint venture to meet the exemptions to the Public Contracts Regulations 2015 and accordingly avoid the necessity of a full EU procurement. However where a particular arrangement includes the involvement of a private sector partner careful considerations needs to be given to whether the exemptions apply to the particular arrangement.

## Employment

The employment issues arising from the different models must also be considered in advance. These include considering whether any employees will transfer or be seconded to a different employer. If TUPE is likely to apply on commencement of the re-arranged services (and on the exit from the arrangements), there are important due diligence and risk share issues to be considered.

In addressing these issues, there are various ways of structuring the consortium in order either:

- to minimise staff movement; or
- to ensure that one lead body takes on employment of all the staff.

Whichever structure is being considered, the potential for organisational change and the related transfer and redundancy consultation obligations must be considered.

Combining several work forces and the various terms upon which each cohort of staff is employed is a lengthy and difficult process. This process must also be combined with management of the workforce expectation and staff side engagement that will be required for any successful consolidation of this nature.

## Regulatory approvals

Internal approvals and governance arrangements must be considered by participant boards.

If NHS foundation trusts are involved, NHS Improvement will need to be satisfied as to the proposals (particularly in relation to material or significant transactions) and in particular that the arrangement is structured to remain within the powers of a NHS foundation trust. NHS trusts will also have to obtain the appropriate regulatory sign offs.

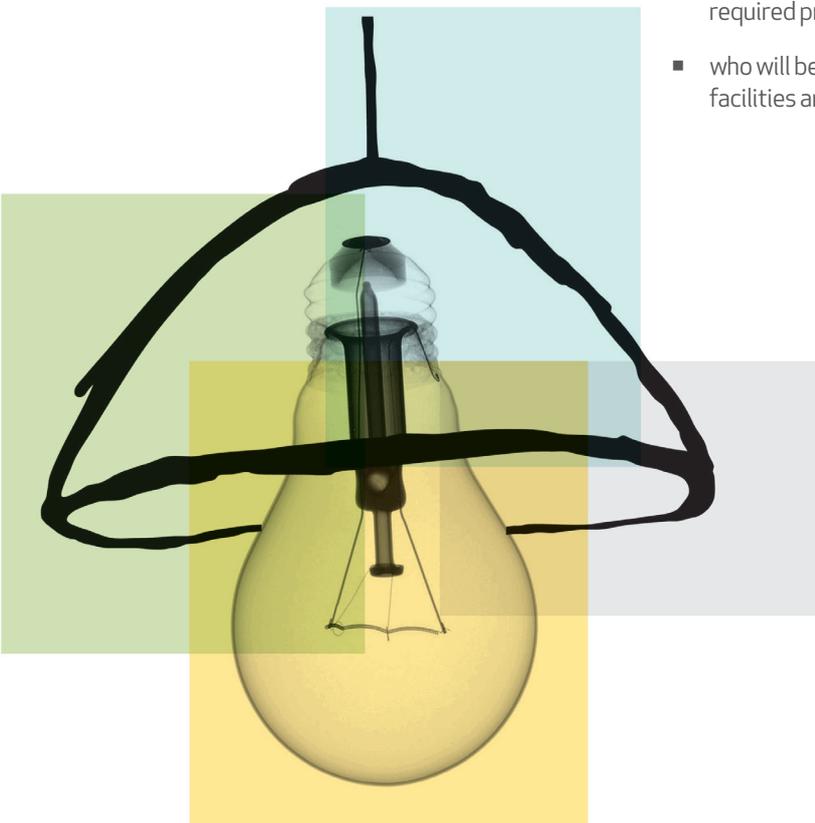
You will also need to consider whether the proposed arrangements fall within the Competition and Markets Authority (CMA)'s definition of a "merger" and therefore requires approval from NHS Improvement and possibly clearance from the CMA.

## Property rights

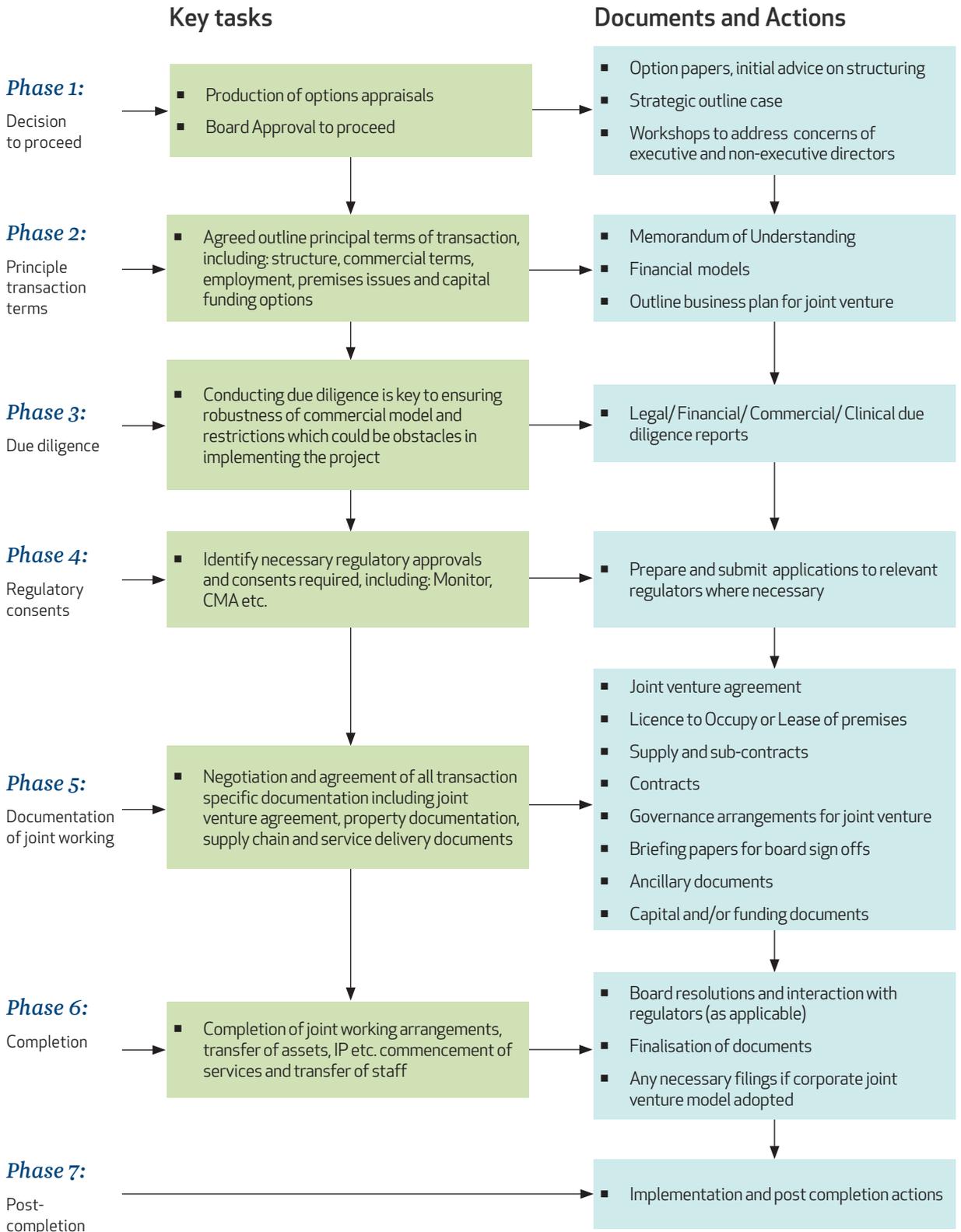
You will need to consider how assets to be used by the NHS bodies will transfer or be licenced. The effect that the joint working model will have on any existing managed equipment provision should also be carefully considered.

To ensure all parties to the joint working model understand the true cost of service provision, contractual certainty in how the property arrangements are to be structured is essential and should be understood prior to the start of any procurement process. The key estates questions to be considered at the outset include:

- where will the services be provided from?
- if facilities are available who will pay for them?
- how will the space be occupied?
- are the facilities fit for purpose or are works required prior to the commencement of services?
- who will be responsible for maintenance of the facilities and equipment?



# Key legal tasks and documents



# Our experienced team: here to help

We are well versed in these and other challenges that you will face and would be very happy to arrange a meeting with you to brainstorm some of these issues and help you explore your options and create a project plan(s).



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