

Helping trusts meet the financial challenge

Identifying productivity and efficiency savings



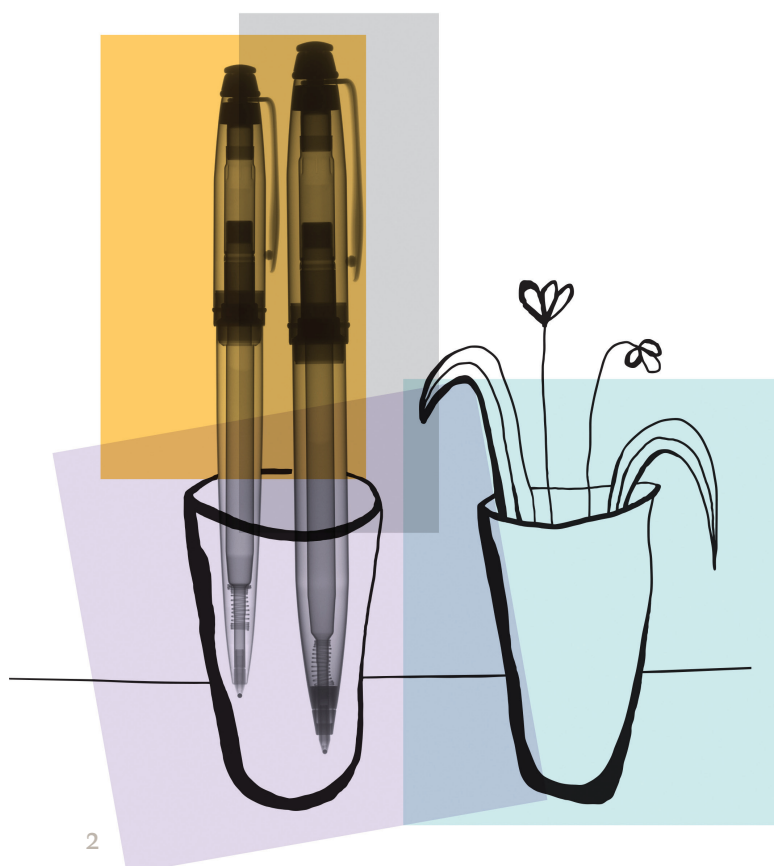
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The pressure on NHS providers to make financial savings continues unabated. Capsticks is working with NHS trusts and foundation trusts all over the country on a range of productivity and efficiency measures. Some of these projects give quick, easy wins for our clients. Other solutions are more innovative but could deliver more radical solutions. As lawyers, we also see where a small investment upfront can save significant costs later on.

In the tables that follow we've set out some of the ways we are helping to deliver savings for NHS providers. We have also included proposals to take into account the direction of healthcare, especially in relation to integration and primary care projects. We've RAG rated the projects to help separate the "low-hanging fruit" from those projects which carry greater risk. The tables cover savings in all areas - workforce, real estate, reconfiguration and contractual savings.

If you'd like to discuss any of these projects, please get in touch with the lawyers named at the end of this booklet.



Achieving productivity gains

Potential options for commercial, estates and reconfiguration

	Productivity Saving/Gain	Level of Saving	Risk Factors	Advantages	Timescale?
1	Consider integration and joint working on clinical pathways (working with commissioners and other providers)	Medium to high	Very few risk factors. A failure to identify integration opportunities may mean other providers or commissioners take the initiative leaving other organisations 'behind the curve'. Integration may not result in a "win-win" outcome for participating providers. Some joint working projects may cause competition issues if not properly structured.	Improved and integrated patient care and outcomes, release of savings and ability to invest in other services.	Short to medium-term depending on extent of integration.
2	Active approach to future tenders	Medium	Will depend on strength of relationship with commissioners and availability of information.	Anticipating tenders and approaching tender response in a more professional manner may increase chances of contract award. Discussions with commissioners may identify situation in which competitive tenders can be avoided.	Medium to long-term
3	Active and continued performance management of standard commissioning contract	Medium to high	May depend on appetite to actively manage relationships with commissioners, and may depend on relationship strength.	Protects the NHS provider against unexpected deductions. Will preserve income streams, particularly where management responsibilities have not been properly shared. Demonstrates good governance and commitment to efficiency.	Short-term
4	Active contract management of other income contracts and expenditure contracts	Low to medium	Low risk. May require dedicated contract management resource which could necessitate initial outlay.	Demonstrates good governance and commitment to efficiency. Can realise large savings without any change to existing arrangements.	Short to medium-term
5	Regularising undocumented or unsigned arrangements	Low to medium	Very few risk factors but if arrangements have been undocumented for many years, there may be resistance to change and/or documenting arrangements may prompt counterparties to revise any favourable terms.	Protection and certainty around income streams using standard form agreements. Avoids ability for counterparties to terminate arrangements easily leading to loss of revenue. Potential liability can be mitigated by use of limitations on liability.	Short-term
6	Enforcing rights against overseas visitors	Low to medium	May be administrative costs in pursuing rights/claims. There may be sensitivity in demanding payment for certain treatments, especially in relation to vulnerable patients. Potential penalty if money not recovered appropriately.	Protects revenue streams and lost expense where services will otherwise be unpaid by commissioners.	Short-term

	Productivity Saving/Gain	Level of Saving	Risk Factors	Advantages	Timescale?
7	Improving construction/project management and procurement	Medium	Investment in process	May speed up the delivery of projects enabling the Trust to realise opportunities earlier. Achieve savings through fewer changes to construction specifications, reducing variation spending. Focus on improved project management to achieve cost efficiencies	Short-term
8	Reducing delay from procurement disputes and minimise exposure to challenge	Medium	There may be an external cost on procurement advisers. May be seen as a challenge to existing practices.	Avoid costly re-winding of processes and minimise exposure to risk of challenge (and so avoid reputational damage, costs and management time in dealing with challenges).	Short-term
9	Utilising estate more efficiently	Medium	There may be difficulties in persuading third parties to share the same space. Requires buy-in from all occupiers.	Relatively easy to implement more intensive space utilisation through different occupiers sharing same premises, either at same time or on different hours/days. Should free up more estate for potential site disposal and reduce maintenance costs for estate.	Short to medium-term
10	Contract review to exercise benchmarking or early termination rights, especially on expensive long-term arrangements	Medium	Contractual counterparties may resist termination but risk will be low if contractual rights exist. May trigger TUPE transfers.	Savings may be significant, particularly if benchmarking or voluntary termination rights have not previously been exercised.	Short to medium-term
11	Reconfiguring services within a hospital site	Low	May depend on availability of space within a hospital site.	Careful space planning around patient flows can improve productivity and pathways. Ability to design services to maximise efficiency of in-hospital and out-of-hospital service delivery.	Medium-term
12	Review and regularise information governance processes	Medium	Minimal but will need to ensure no impact on delivery of patient care or data sets externally during regularisation process.	Will ensure clear processes in place to safely deal with patient and other data held. Allows new legal obligations under Care Act to be built in to systems. Enables the delivery of clear data to commissioners supporting revenue stream delivery.	Medium-term

	Productivity Saving/Gain	Level of Saving	Risk Factors	Advantages	Timescale?
13	Achieving greater energy efficiencies	Low to medium	Will require up-front investment, possibly in new plant or power system.	Relatively easy to achieve. Establishing energy usage across estates portfolio will help to reduce energy consumption across estate. Also allows opportunities to recoup CRC scheme costs via recharge to tenants.	Medium-term
14	Leasehold premises disposals/surrenders	Medium. Depends on revenue savings	May depend on service reconfiguration. Will be affected by land values.	May reduce ongoing estates maintenance costs. Exercising existing lease break rights held by the Trust can reduce ongoing management expenditure.	Medium-term
15	Using technology to streamline communications with members and governors and structuring governance elections to avoid loss of knowledge	Low	Changes to constitution and implementation of electronic systems.	Will reduce administrative costs. Avoids wasted costs on training and loss of knowledge and expertise.	Medium to long-term
16	Variations to long-term outsourcing arrangements	Medium	Contractors may resist changes or employ delaying tactics.	Reduction of project costs.	Medium to long-term
17	Maximising income through on-site retail concourses and outlets	Medium	May depend on existing surplus space and patient/visitor footfall. Exclusivity issues or competing demands between retailers?	Third party developers may offer to fund concourse development. Potential for share in retail profits through 'turnover rents'.	Medium to long-term

	Productivity Saving/Gain	Level of Saving	Risk Factors	Advantages	Timescale?
1	Minimising bed-blocking	Low to medium	Will depend on the option selected. Options range from severe (eviction) to mild (warning letters only). May depend on availability of local authority or alternative care arrangements. May cause public relations issues if patients seem to be forced out of hospital.	Avoids loss of revenue due to occupation of beds by patients fit for discharge. Recovery of costs from local authority.	Short-term
2	Occupational regularisation	Medium	Negotiations could prove time consuming. Occupiers who do not yet pay rent or outgoings may be reluctant to buy into regularisation process without some benefits for them.	Income generated through increased rents; recovery of estates maintenance costs via pass-through costs can be applied. Improved risk management.	Medium-term
3	Identifying services that are provided without payment or at a loss and re-negotiating local tariff or different service specification	Medium	Negotiations may be difficult. If commissioners have not identified that services are provided without payment. Cessation of unpaid services may trigger consultation obligations.	Securing income or reduction of cost base for some services.	Medium-term
4	Bidding to provide different or out of area services (i.e. moving into new markets)	Medium to high	Requires sufficient investment in bidding process and may require additional resources or external support. Management of long distance clinical may be challenging.	Secures future revenue streams. May allow Trusts to start networks of care.	Medium-term
5	PFI variations	Medium to high	PFI contractor may prolong negotiations to avoid reduced unitary payment. Variations may cause redundancies or other ancillary costs. Trust-led variations may be expensive if not tightly managed. Variations may give rise to procurement law risks. Buy-out costs may exceed ongoing PFI costs,	Significant reductions in unitary payments may be achieved by stripping out unnecessary or poorly performing services.	Medium to long term
6	Exploiting income generation activities	Medium	Requires sufficient investment and consideration of appropriate vehicle. May require external support to properly structure financial and legal aspects of the activities. May trigger governor approvals regarding increases in non NHS income and caps on non NHS income.	Secures future revenue streams and provides a hedge against reducing income.	Medium to long-term

	Productivity Saving/Gain	Level of Saving	Risk Factors	Advantages	Timescale?
7	Outsourcing of back office services	Medium	Process requires full compliance with procurement law and application of procurement best practice to ensure the “right” services are bought and delivered. TUPE risks to be managed and pension issues may be triggered.	May deliver savings on back office services. May allow the Trust to focus on core services.	Medium to long-term
8	Shared services arrangements with other NHS bodies (for example, pathology, payroll, estates services, and management services)	Medium	Arrangements must be properly structured to avoid procurement risk. TUPE and redundancy risk share arrangements will be complex. Contractual arrangements, particularly around termination and performance must be properly documented to avoid participants being left with unexpected risks and expenses. May trigger CMA / Monitor competition directorate issues.	Reduction in spend; allows for best practice to be shared in the NHS.	Medium to long-term
9	Private patient joint venture	Medium to high	Will require investment in procurement to ensure robust documentation and protection of income streams. Will likely require capital investment. For NHS foundation trust it may be limited by private patient cap of 49% of FT income.	May lead to increased revenue and hedge against loss of NHS income streams.	Medium to long-term
10	Investment in primary care	Medium	May trigger regulatory issues depending on nature of primary care contract. Requires suitable opportunities in the local health economy and may require initial capital investment.	Better management and control of patient care pathways allowing smoother management of step up and step down care.	Medium to long-term

	Productivity Saving/Gain	Level of Saving	Risk Factors	Advantages	Timescale?
1	Downgrading services	Medium to high	Will require clear explanations to stakeholders setting out positive benefits and compliance with consultation law requirements. May trigger concerns amongst staff and local population over viability.	May generate savings and ensure that services are sustainable, particularly where there are risks to clinical delivery.	Short to medium-term
2	Outsourcing of clinical support services (for example, pathology, pharmacy, decontamination and radiology)	Medium to high	Will require investment in process. May trigger staff concerns about loss of control over services. Will require clinician and legal involvement. Will trigger TUPE transfers of NHS staff and possible pension issues.	May generate significant savings, particularly where services are being delivered at a loss.	Medium-term
3	Land sales	Medium to High	May depend on service reconfiguration, and the gain will depend on land values.	Relatively easy to implement disposals process for surplus sites. Overage and clawback can share the future enhanced value. Capital receipts could be significant. Reduces ongoing estates related costs.	Medium-term
4	Closing wards or services	High	Will require clear explanations to stakeholders setting out positive benefits and compliance with consultation law requirements. Will trigger concerns amongst staff and local population over viability. Risk of judicial challenge and political interventions.	Will generate savings and allow hospitals to consolidate on sites, ensuring that remaining services are sustainable.	Medium to long-term
5	Merger or acquisition	Medium to high – depends on strength of merging organisations	May cause drain on management time. Integration may be expensive. Loss of patient choice may trigger competition issues. Cultural integration may be difficult and time consuming.	Merged organisation may find synergies across service lines and through back office savings. Ability to create sustainable services across sites. Will allow for economies of scale across a larger organisation.	Medium to long-term
6	Management support to other trusts and exploit 'high performing' NHS status	Medium to low	Must be clearly defined to apportion risk and responsibility adequately and to minimise reputational risk.	Additional income and savings may be generated.	Medium to long-term
7	Strategic estates solutions (eg strategic estates partnerships)	High	May require significant costs to set up joint venture model. Potential procurement complexity. Unlikely to generate savings without pipeline of disposals and/or development projects.	Should generate enhanced capital receipts and/or funding for development of new facilities. Allows for innovative estates solutions via private sector expertise.	Medium to long-term

Achieving Workforce Savings

Potential Options

	Workforce Saving	Level of Saving	Risk Factors	Advantages	Timescale?
1	Reduce agency spend	Depends on usage	Difficulties in covering internally	Easy to achieve – no changes to current staff Ts+Cs required. Low litigation risk. Mitigates increased risk and expenditure due to Agency Regulations. Increasing bank pool will assist.	Short-term
2	Create extended internal banks of staff	Depends on usage	Coordinating and running extended bank arrangements, for example, doctors and admin staff. Higher risk of acquiring employment rights than agency workers. Risk of claims by agencies for introduction fees for agency workers transferring to bank work.	Creates an internally-vetted and managed group of staff that can be utilised on rates that are lower than those charged by agencies.	Short-term
3	Rewards for attendance: retail or day-out vouchers	Low to medium, depending on absence levels	May encourage staff to come to work when sick, which could be counter-productive	Encourages attendance and avoid “sickies”. Reduction in need for agency cover.	Short-term
4	Reduce bank/locum rates	Depends on usage	Will those workers still be willing to cover shifts or will they work for other Trust banks?	Relatively easy to achieve – no contractual variation required and low litigation risk, other than for long-term bank workers/locums.	Short-term
5	Extend notice periods	Medium	Requires staff/staff-side agreement or dismissal/re-engagement	Can be agreed locally and unlikely to receive significant opposition. Prevents unnecessary agency spend whilst vacancy filled.	Short-term
6	Introduce streamlining arrangements across trusts for workers	Medium	Requires cooperation across trusts and robust systems in place	Reduces need for and speeds up pre-employment checks (OH, reference, right to work); reduces repeat statutory/mandatory training. Prevents unnecessary agency spend whilst vacancy filled.	Medium-term
7	Reduce overtime spend (eg through e-rostering)	Depends on usage	Up front costs/organisation	Easy to implement	Short-term
8	Effective monitoring of junior doctor rotas	Medium to high	Will it lead to lack of cover? Will it be enforced by doctors/consultants?	Doctors can increase their salaries by up to 100% if rotas are not compliant, or if compliant rotas are not adhered to. If strict guidelines are in place, can be easy to monitor and avoid higher bandings/claims.	Short-term

	Workforce Saving	Level of Saving	Risk Factors	Advantages	Timescale?
9	Re-banding and benchmarking	Medium	Can be an intensive process and meet with union resistance.	Set process to achieve this under AfC, and therefore difficult to challenge the outcome.	Medium-term
10	Recruit new employees on the basis of 35 hours pro rata per week rather than 37.5	Medium	Will the same quality/level of work be achievable in shortened hours? Will it fit with rotas?	No variation to contract required as applies to new recruits. Effectively the same as employing part-time workers. No equal pay issues.	Short-term
11	Voluntary Early Redundancy Schemes	Medium	Take up has been patchy to date; age discrimination.	Simple way to achieve savings if the right individuals volunteer. Schemes can either be pre-approved by Treasury or approval sought on a cases by case basis. No contractual variation issues – relies on volunteers.	Short-term
12	Retire and Return	Medium	For an interim period, can only work maximum of 16 hours per week. Must have 24 hour break in employment.	Allows Trust to take people back into adjusted roles, whether in terms of different duties or reduce hours, in accordance with service needs.	Short-term
13	Introduce probationary periods for new joiners	Low	Need to be managed properly	Whilst not giving significantly increased legal protection, it sets the parameters of the psychological contract and encourages managers to actively review the progress of new joiners.	Short-term
14	Introduce “pooled” contracts (i.e. flexible as to location so employees can be moved around different wards and areas).	Low	Builds on existing flexibilities and can be introduced for all new joiners. Need to ensure employees appropriately skilled for each area	Creates the flexibility to respond to peaks and troughs in demand, saving on agency and bank costs.	Short-term

	Workforce Saving	Level of Saving	Risk Factors	Advantages	Timescale?
1	Review doctor job plans: (a) DCC/SPA split, (b) removal of additional PAs, (c) review on-call intensity payments, (d) implement "no job plan, no Clinical Excellence Award" rule, and (e) design robust criteria for local CEAs.	Medium to high	Likely to meet significant resistance from BMA/doctors. Will reducing PAs leave sufficient resources to cover work? Risk of unfair dismissal claims/redundancy if reduce PAs (documentation re additional PAs will be important on this)?	Can be achieved within contract, therefore does not require a variation. Many organisations already addressing this, with some getting down to an 8:2 DCC/SPA split or lower (against recommended 7.5:2.5).	Short-term
2	Recruit on the basis of a 40-hour working week rather than 37.5-hour working work	Low, but increased productivity	Unattractive offer compared to other trusts? Equal pay risk.	Extra 2.5 hours' working time each week, leading to increased productivity and, for example, ability to cross-cover	Short-term
3	Reduce on-call rates	Medium	Likely to require staff/staff-side agreement or dismissal/re-engagement.	Allows simple reduction in pay bill for trusts with significant on-call commitments.	Short-term
4	Reduce sick pay entitlement by 50%	Low	Requires staff/staff-side agreement or dismissal/re-engagement. National term.	Only applies to a minority of staff at any one time, so less resistance but equally less marked effect? Some staff feel they have to cover for those on long-term sick.	Medium-term
5	Sick pay entitlement only kicks in after one week off sick	Medium	Requires staff/staff-side agreement or dismissal/re-engagement. May encourage staff to come to work when sick, which could be counter-productive. May penalise those with genuine short-term sickness rather than long-term sickness.	Encourages attendance and avoids "sickies". Reduction in need for agency cover.	Medium-term
6	Negotiate a reduction in mileage allowance and/or use of fuel cards	Medium	Requires staff/staff-side agreement or dismissal/re-engagement.	Staff-side has already reached agreement with several trusts on this on basis that lower-paid workers are adversely affected: new system = overall saving to trust, but less impact on lower paid employees	Short-term
7	Reduce annual leave by one day per annual leave year	Medium	Requires staff/staff-side agreement or dismissal/re-engagement. National term.	Applies equally to all staff.	Medium-term
8	Enhancements for unsocial hours start two hours later	Medium to high	Requires staff/staff-side agreement or dismissal/re-engagement. National term.	Will only affect limited number of staff.	Medium-term

	Workforce Saving	Level of Saving	Risk Factors	Advantages	Timescale?
9	Level of Sunday pay enhancement reduced to Saturday enhancement	High	Requires staff/staff-side agreement or dismissal/re-engagement. National term.	Will only affect limited number of staff.	Medium-term
10	Introducing more flexible contracts in terms of eg hours and locations	Medium to high	Requires staff/staff-side agreement or dismissal/re-engagement. Local term.	No immediate impact therefore likely to be less resistance initially. Will allow much more flex in responding to service needs (particularly in the new healthcare market).	Medium-term
11	Reduce headcount	Medium to high	Requires redundancy process and extensive consultation. Potential claims and redundancy payments at the end of the process.	Enables services to become “lean”, using the remaining staff more intelligently to deliver a better service.	Short-term
12	Withholding increments or (for doctors) progression through thresholds	Medium	Are adequate appraisal systems in place to enforce consistently? Risk of breach of contract claims.	Can be done within existing national terms if robust appraisal system (and appraisal completion) is in place. Can also be done for doctors but rarely used in practice at present.	Short-term
13	Withdrawal of RRP	Medium	Requires staff/staff-side agreement or dismissal/re-engagement. Likely to meet resistance.	Can implement on basis that RRP no longer justified. Limited number of staff. Potential to buy-out entitlement?	Medium-term
14	Introduce bonus schemes for senior managers: lower basic pay but potential for higher pay if performance objectives reached	Low but encourages productivity	Would need agreement if involves reduction in basic pay for existing directors. Might put off some candidates.	Encourages productivity, can be introduced for new employees and can generally be implemented under existing senior manager contracts by introducing in place of annual pay increases.	Medium-term
15	Salary sacrifice schemes: cars, child care, life assurance	Medium	Can reduce pensionable pay; consultation to introduce with full information for employees	Can reduce tax liability for trusts.	Medium-term
16	Remove entitlement to a contractual redundancy payment	Medium to high	Requires staff/staff-side agreement or dismissal/re-engagement. Significant benefit.	Could lead to significant savings in restructuring scenarios as statutory redundancy pay is much lower than contractual pay. Could encourage employees to accept suitable alternative employment.	Medium-term

	Workforce Saving	Level of Saving	Risk Factors	Advantages	Timescale?
1	Work for a day unpaid	Medium	Requires staff/staff-side agreement or dismissal/re-engagement. Difficult to achieve – suggestion that staff are reluctant to accept	Impacts equally on all staff groups	Medium-term
2	Move away from AfC and introduce purely local terms	High	Requires staff/staff-side agreement or dismissal/re-engagement. National terms. Potential equal pay/ political issues. Union resistance?	Allows wholesale changes to the employer's advantage.	Long-term

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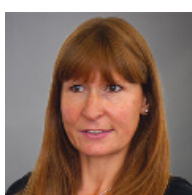
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