

Delegated limits for capital investment

December 2010

Prepared by Capital Investment Branch

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Contact Details	John Mann Capital Investment Branch Quarry House, Quarry Hill Leeds LS27UE 0113 254 5358 http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance
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Delegated limits for capital investment

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Executive summary

The delegated limits for capital investment published in November 2007 have been updated to reflect the fact that the Care Quality Commission will no longer be publishing aggregated performance scores for NHS Trusts and PCTs, and that in the near future PCTs will have no responsibility for providing direct services and all NHS Trusts will become Foundation Trusts.

The body of this guidance note sets out in detail the delegated authority for capital transactions of NHS Trusts, Primary Care Trusts (PCTs) and Strategic Health Authorities (SHAs), and addresses some of the frequently asked questions about the application of delegated limits. NHS Foundation Trusts are not subject to delegated limits for capital investment set by the Department of Health.

It should be noted that where two or more schemes have similar timelines and strategic rationales and they are batched together in order to achieve best value for money (due to economies of scale), it is recommended that they are batched together. In these circumstances, the delegated limits should not be circumvented by progressing schemes individually.

It is recognised that some NHS organisations may have schemes that are close to contract signing / financial close, which previously were within their delegated capital investment limits, but where this is no longer the case under the new guidance. In order to mitigate the risk of an adverse impact on schemes that are very advanced, and for which delay at such a late stage could have commercial and financial consequences, the previous delegated limit may continue to apply for that specific scheme at the discretion of the SHA Director of Finance. This provision will be in force from the publication of this document until the end of March 2011.

Department of Health

- The Department of Health's (DH's) delegated limit for the approval of full business cases (FBCs) for public capital financed builds, PFI and IT schemes has for some time been £100 million, and HM Treasury's approval has therefore been required for cases of over £100million. HM Treasury has not formally withdrawn this delegated limit, but, as a result of the more constrained outlook for the public finances, has decided that it must review and approve all business cases for capital investment produced by NHS Trusts and PCTs that exceed £35 million. As DH approval is a pre-condition for the Treasury's approval, all business cases (outline and full) that exceed £35 million will now require approval by both DH and the Treasury.

SHAs

- SHAs may approve all NHS Trust and PCT business cases up to £35 million. As all cases requiring Departmental clearance also need Treasury clearance, the SHA delegated limit of £35 million applies to all cases, ie Outline Business Cases (OBCs), Appointment Business Cases (ABCs), Full Business Cases (FBCs), and Stage 1 and 2

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LIFT cases. This limit applies to all build, PFI and IT contracts and all investments financed through lease transactions.

- SHAs have a delegated limit of £5 million for their own business cases.

PCTs

- SHAs will approve all capital contracts entered into by PCTs. PCTs may not self-approve any business cases; their delegated limit is therefore zero.

NHS Trusts

NHS Trusts may self-approve all business cases up to a value of £3 million, above which, they will require SHA approval. However, there are two exceptions to this rule:

- This limit may be suspended, and the NHS Trust will require SHA approval whatever the capital value of the case, when cases are 'complicated and contentious' as determined by the SHA Director of Finance.
- If the NHS Trust goes into financial deficit, the SHA Director of Finance has the discretion to reduce the limit to £1 million, in which case the NHS Trust will require the SHA approval for all cases above £1 million. (See paragraph 9 below for a definition of financial deficit.)

Delegated limits for capital investment

This guidance revises the delegated limits used to determine the approval processes for individual capital investment proposals (including those for PFI schemes and for leases) for NHS Trusts, Primary Care Trusts (PCTs) and Strategic Health Authorities (SHAs). This document updates the delegated limits guidance published in November 2007. It takes into account that: the Care Quality Commission will no longer be publishing aggregated scores of 'excellent', 'good', 'fair' or 'weak' for NHS Trusts and PCTs; that in the near future PCTs will have no responsibility for providing direct services; and that all NHS Trusts will become Foundation Trusts.

This revision will remove PCTs' delegated limits. However, given the announced abolition of PCTs and the fact that they are currently divesting themselves of all provider responsibility, it is considered that a zero limit for PCTs is now appropriate.

The revision will also result in the delegated limits of NHS Trusts being lowered. This fits with the policy direction to increase financial scrutiny prior to them gaining Foundation Trust status.

General principles

- The reasons for the revision of the delegated limits guidance are that NHS Trusts and PCTs are no longer performance-rated in the way they used to be, that PCTs will shortly have no responsibility for providing direct services, and that NHS Trusts will in the future become Foundation Trusts.
- For the purposes of this document, 'PFI' includes LIFT.
- The terms 'Outline Business Case' (OBC) and 'Full Business Case' (FBC) include 'Stage 1' and 'Stage 2' LIFT approval stages respectively.

For IT, leased equipment and leased property, the limits apply to whole life costs, not capital cost. For leased property, the limits apply to the whole-life cost of the transaction, rather than just capital cost.

Where two or more schemes have similar timelines and strategic rationales and it makes sense to batch them together to achieve best value for money due to economies of scale, it is recommended that they are batched together. In these circumstances, the business case approval process should not be circumvented by progressing schemes singly.

Delegated limits for capital investment

- 1 The Department of Health (DH)'s delegated limit for the approval of full business cases (FBCs) for public capital financed builds, PFI and IT schemes has for some time been £100 million, and HM Treasury's approval has therefore been required for cases of over £100million. HM Treasury has not formally withdrawn this delegated limit, but, as a result of the more constrained outlook for the public finances, has decided that it must review and approve all business cases for capital investment produced by NHS Trusts and PCTs that exceed £35 million. Because DH's approval is a pre-condition for the Treasury's approval, all business cases (outline and full) that exceed £35 million will now require approval by DH and the Treasury.

Strategic Health Authorities

- 2 For SHAs, which approve business cases above their NHS Trusts' and PCTs' limits, the delegated limit is £35 million. This limit applies to PFI schemes, publicly-funded schemes, IT schemes and equipment and property leases. There is no requirement for DH to sample business cases below £35 million.
- 3 SHAs' delegated limit for their own business cases for any kind of capital investment remains £5million. Above this level, they will require DH approval.
- 4 All business cases above the SHAs' delegated limit require approval from DH.

PCTs

- 5 SHAs will approve all capital contracts entered into by PCTs. PCTs may not self-approve any business cases; their delegated limit is therefore zero.

NHS Trusts

- 6 NHS Trusts may self-approve all business cases up to a value of £3 million, above which they will require SHA approval. However, there are two exceptions to this rule:
 - This limit may be suspended, and the NHS Trust will require SHA approval whatever the capital value of the case, when cases are 'complicated and contentious' as determined by the SHA Director of Finance.
 - If the NHS Trust goes into financial deficit, the SHA Director of Finance has the discretion to reduce the limit to £1 million, in which case the NHS Trust will require the SHA approval for all cases above £1 million. (See paragraph 9 below for a definition of financial deficit.)
- 7 There will no longer be any variations for performance ratings or turnover.
- 8 The Department of Health reserves its right to further lower the delegated limit for individual trusts.
- 9 "Financial deficit" means
 - a reported year-end deficit in the most recent audited accounts, or

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- a forecast full-year deficit in the current financial year, or
- an unplanned year-to-date deficit.

Other considerations

- 10 Some other important considerations for NHS Trusts, PCTs and SHAs, concerning their authority to undertake capital investment are referred to below:

Good Practice and Governance

- 11 NHS Trusts, PCTs and SHAs have a duty to produce business cases to justify all significant investments. The Chief Executives of NHS Trusts, PCTs, and SHAs are Accountable Officers responsible for ensuring that investment decisions comply with the Capital Investment Manual, Estatecode and other established NHS best practice guidance.
- 12 For build schemes with a capital cost over £20 million that are considering procurement through PFI, P21+ and OGC Buying Solutions, the NHS specific version of the 2008 Treasury value for money assessment guidance should be followed at OBC, ABC and FBC to determine whether the chosen procurement method is indeed the most appropriate method of financing the scheme. For all projects, the business case principles in the 1994 version of the Capital Investment Manual remain relevant. These documents can be found at:

http://www.dh.gov.uk/en/Procurementandproposals/Publicprivatepartnership/Privatefinanceinitiative/InvestmentGuidanceRouteMap/DH_4133176

Gateway Project Review Process

- 13 The Gateway Project Review Process applies to all high risk and some medium risk projects within the NHS. The Gateway process can also be applied to the management of expenditure projects and to the planning of policy or change initiatives with relatively small expenditure. A Risk Potential Assessment (RPA) should be drawn up for *all* projects, and where a project is assessed as high or medium risk, the Trust concerned should submit the RPA to the Gateway team. The telephone number and email address for the Gateway team are 0113 254 6249 and DH_NHSGatewayreviews@dh.gsi.gov.uk

Business Case Checklists (for OBCs, ABCs, FBCs, LIFT Stage 1 and 2)

- 14 NHS organisations are required to complete and submit business case checklists for all build schemes that are submitted to DH or to SHAs for business case approval. Any OBC, ABC, FBC and LIFT Stage 1 and 2 checklist that is incomplete or incorrectly endorsed will be returned. An OBC, ABC, FBC, or LIFT Stage 1 and 2 cannot be approved until the checklist has been fully completed and any variant features approved. SHAs, or if in doubt DH's Capital Investment Branch, should be able to supply up-to-date checklists for completion.

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- 15 Completion of checklists is also recommended for substantial investments that fall beneath NHS Trusts' and PCTs' delegated limits, to demonstrate for audit purposes that best practice guidance has been followed.

EFDA Certification

- 16 The National Health Service Act 2006 states that PFI contracts may be confirmed as within the power of the Trust by way of an EFDA certificate. If an EFDA certificate is required, it must be signed by a Senior Civil Servant. Before an EFDA certificate is issued, the Senior Civil Servant will take advice from the DH Private Finance Unit, which will require assurance from the Trust's lawyers that the scheme complies with the Standard Form Project Agreement.

Initiating the largest schemes

- 17 There is no longer a formal central prioritisation process for the largest capital schemes. Strategic outline cases (SOCs) nevertheless remain necessary for the largest schemes (those that are above SHAs' delegated limits for approval of Outline Business Cases) and are highly recommended for all schemes. They are now approved by SHAs, rather than the Department.
- 18 The key role of the SOC is to act as a feasibility study, setting out the strategic objectives of the investment and showing that one or more deliverable, affordable solutions exist to deliver the strategic objectives before the far more detailed and expensive outline business case preparations are undertaken. The service and other parameters set out in the agreed SOC document also form a useful basis on which to conduct public consultations where these are necessary.

Retention of Land Sale Proceeds

- 19 This section concerns the retention and re-investment by NHS Trusts and PCTs of the proceeds from the sale of their surplus property to bodies outside the NHS.
- 20 An NHS trust is entitled to retain and re-invest land sale proceeds of up to £3 million from a disposal transaction. (This limit mirrors the delegated limit for the approval of NHS Trust capital investment business cases.) However, there is an exception to this rule:
 - If the NHS Trust goes into financial deficit, the SHA Director of Finance has the discretion to reduce the limit to £1 million, in which case the NHS Trust will require the SHA approval for all cases above £1 million. (See paragraph 9 above for a definition of financial deficit.)
- 21 Given the position of PCTs, following the White Paper *Equity and Excellence: Liberating the NHS*, PCTs will have no delegated limit, i.e. all requests for the retention and re-investment of land sale proceeds must be referred to the SHA.
- 22 The delegated limits for the retention of land sale proceeds apply to individual land sale transactions. Property disposals should not be artificially parcelled or staggered to keep beneath a delegated limit. The disposal of adjoining or otherwise logically connected

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pieces of land will be viewed as a single disposal transaction for the purposes of applying delegated limits, regardless of when sold.

Leased Office Accommodation

- 23 Any lease for office accommodation for the Department of Health or its Arms' Length Bodies currently requires explicit Treasury approval, regardless of value. The Department's Capital Investment Branch will co-ordinate this with Treasury.

Transactions not covered by this guidance

- 24 As novel commercial models are developed, transactions may arise for which the limits described above are not appropriate and approval arrangements specified for them will override this guidance. Such exceptions are expected to be rare and will be drawn to the NHS' attention through the guidance accompanying the new commercial model.

Contact details

- 25 DH's Capital Investment Branch (CIB) should be notified in advance of any business cases that will require DH approval, so that this may be arranged. The contact for this is John Mann on 0113 254 5358, room 3W60, Quarry House, Quarry Hill, Leeds, LS2 7UE. Business cases that require DH approval should be sent in with a completed checklist. (Please contact CIB for an appropriate checklist if you do not have one.) CIB will arrange onward transmission to the Treasury where necessary.
- 26 Draft EFDA certificates requiring signature should be discussed first with the DH Private Finance Unit (PFU, c/o John Mann at the address in the preceding paragraph to ensure that the project is standard form compliant and off-balance sheet.
- 27 Any queries on this guidance should be addressed as follows:

Topic	Contact
General queries regarding this guidance	John Mann, CIB Room 3W60 Quarry House, Quarry Hill, Leeds LS2 7UE Telephone 0113-254-5358
PFI and Public Construction and IM&T Schemes	Susan Peak, FID CIB Room 3W60 Quarry House, Quarry Hill, Leeds LS2 7UE Telephone 0113-254-5305

Definitions

For IT, leased equipment and leased property (except LIFT and third party development schemes providing buildings for health care/ service provision) the delegated limits apply to whole life costs, not capital cost. For leased property, the limits apply to the whole-life cost of the transaction, rather than just capital cost. The definitions that apply to these delegations are given below:

(Note that calculations of cost should not include any amounts for optimism bias.)

Total Capital Cost – Publicly Funded Build Scheme

The total capital cost is as per line 10 - "TOTAL (for approval purposes), cost including VAT" - of forms OB1/FB1 in the Capital Investment Manual. This total includes the cost of all equipment that has to be bought to deliver the functioning scheme.

Total Capital Cost – PFI Funded Build Scheme

Total capital cost to the private sector including the cost of construction, equipment, professional fees, rolled-up interest and financing costs such as bank arrangement fees, bank due diligence fees, banks' lawyers fees, and third party equity costs plus irrecoverable VAT. Any capital costs that will be incurred directly by the NHS in progressing the schemes must also be included. Typical examples include land purchased from outside the NHS, equipment and enabling works.

Whole Life Cost – as applied to IM&T schemes

Whole life costs are: the total cost of the project over the life of the contract (typically 7-10 years); including: capital costs, running costs, IM&T staff costs, project management costs and training costs.

The whole life cost is not discounted and does not include: capital charges or depreciation, the cash-releasing benefits, the non-cash releasing benefits, the cost of non-IM&T staff who may use the systems (eg, pathology staff). The cost avoided of the existing IM&T systems should also not be included: nor should VAT, whether recoverable or non-recoverable by the NHS body.

Whole Life Cost – as applied to equipment leases and property leases (except LIFT and third party development schemes providing buildings for health care/ service provision)

For leased equipment and buildings, it is the whole life cost payable under the contract, excluding any VAT, that is compared to the delegated limit. To clarify, this includes any servicing and materials that must be paid for under the contract, even if these are itemised separately and any enabling capital expenditure that is required eg premises alterations to accommodate the equipment or, in the case of property, to make it suitable for the occupier's use.

The relevant term over which to calculate the whole-life cost is the contractual term. In the case of property, any break points that are exercisable only by the occupier should be ignored, as should any statutory right of renewal.

Frequently Asked Questions

Will the delegated limits apply to Foundation Trusts?

No; this guidance applies to NHS trusts and PCTs only. DH does not have any responsibility for setting Foundation Trust delegated limits. Their ability to invest is constrained by their Prudential Borrowing Limit and whatever resources can be generated internally.

What are the delegated limits if a consortium makes the investment?

The delegated limits of the consortium members are not cumulative and where a scheme goes above the delegated limit of a single Trust, it will require SHA approval.

In cases where the members of the consortium are in different SHAs, approval will be the responsibility of the lead trust's SHA. The approving SHA should ensure that any other SHAs involved are content with the proposal.

For the purpose of approval there must be one Outline and one Full Business Case for the whole project. Other members of the consortium are not required to seek external business case approval for their parts of the scheme. They would however need to consider what documentation would be needed to comply with their organisation's own standing orders and standing financial instructions.

How is funding from non-Hospital and Community Health Service sources taken into account when determining the cost of a scheme?

Non-HCHS funding, such as donations and grants, should not be included in the cost of a scheme when deciding if a business case needs external approval. For example:

- An NHS trust has a delegated limit of £3 million;
- It is developing a business case for a £6 million project; and
- This project is being funded by a £3 million charitable donation and £3 million of public capital.

In this case, the NHS Trust can approve the business case, as the amount funded by public capital, (£3million) is within the trust's delegated limit.