

2Gether NHS Foundation Trust

Council of Governors: Merger by way of acquisition (2G and GCS)

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Legal Route to Completion

Merger by way of acquisition

The parties (2G and GCS) agree to “merge” by way of acquisition

Section 56A and 56AA of the NHS Act 2006

One organisation (2G) acquires the assets and liabilities of another (GCS), but the behaviours of the parties are akin to a merger:

- agreed in common arrangements in relation to Board appointments

- new branding/name so that from an external perspective a ‘merged’ entity has been formed.



Role of the Board of Directors and Council of Governors

Board of Directors (1)



Board of Directors (2)

The
Executive
Directors
are
responsible
for:

- bringing forward proposals for the future of the FT, which here includes the proposed merger by way of acquisition; and
- providing Governors with information on the proposed transaction. In this respect the Statutory Guide confirms that the Executive Directors should explain to Governors why they believe the transaction is necessary and provide evidence to support their view.

Board of Directors (3)

The Non-Executive Directors are responsible for:

- challenging the Executive Directors to justify their recommendations; and
- seeking assurance that the Executives' decision to proceed or not is the correct decision in the circumstances.

Council of Governors (1)

The NHS Act 2006 requires that

'more than half the members of the full council of governors'

must approve any application by an FT to merge with or acquire another Trust/FT

Council of Governors (2)

The Governor's role is twofold:

- To hold the Non-Executive Directors, individually and collectively to account for the performance of the Trust's Board of Directors by:
 - ensuring that the Board of Directors have been thorough and comprehensive in reaching its proposals (that it has undertaken proper due diligence); and
 - that the Directors have obtained and considered the interests of Trust Members and the public as part of its decision - making process.
- Provided these assurances are obtained, the Governors should approve the joint application which must be submitted to Monitor/NHS Improvement.



Questions or further information



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Thank you

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