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Jersey | JE2 4WE

Deputy Lyndsay Feltham  
Chair, Public Accounts Committee

**BY EMAIL**

30 March 2023

Dear Chair,

**Re: Proposed Health and Community Services Board of Governance**

Thank you for your letter dated 22 March 2023 which follows our private briefing to the Committee on the matter of the HCS Board (“the new board”). Please see below responses to your queries. I have also included:

- a. an updated draft of the Terms of Reference which have been amended to reflect comments and feedback received to date, including comments provided at PAC at the recent private briefing; and
- b. the draft covering report and proposition, providing background information.

**1. What was the authority basis for standing down the previous board?**

The previous board was established on the authority of the then Minister for Health and Social Services with the endorsement of the Council of Ministers, as such its disbandment is within the authority of the Minister.

**2. What action was taken prior to standing down the previous board in terms of evaluation of its effectiveness?**

The outgoing Minister provided feedback on matters to be addressed by his successor. This included identifying the need to bring forward improved governance structures, including an independently chaired board, to provide the necessary critical appraisal of the Health and Community Services’ (“the department”) performance.

The 2022 *review into clinical governance arrangements in secondary care*<sup>1</sup> similarly focused on need to establish a ‘conventional’ board with non-executive directors to supplement the Minister as a “single, lone figure”, noting that reliance on the Minister to hold executive directors to account as distinct from independent board members resulted in executive directors “*give reassuring, but unchallenged accounts of the way in which the organisation is working*”.

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<sup>1</sup> ‘Review of Health and Community Services (HCS) Clinical Governance Arrangements within Secondary Care’ ([R.117/2022](#)), presented by the Minister for Health and Social Services, States Assembly.

**3. What are the outcomes that you are intending to achieve with the proposed board?**

The proposed new board will bring together the skills, knowledge, and experience needed to critically examine and constructively challenge the Department. It will provide the foundations for an effective governance system based on structured, informed decision-making, and clear lines of accountability rather than being dependent on individuals (ie. dependent on the Minister as single point of failure, or on the executive directors who are invested in day-to-day delivery).

The Board will be one part of improved system of governance – which the Board will be tasked with developing – and which will run from the Assembly to the Minister, to the Board and its committees, onwards to the management and clinical standards groups that encompass all HCS staff and their work. That system of governance will provide the “*architecture of accountability – the structures and processes to ensure companies are managed in the interests for their owners*”<sup>2</sup>. In this case, the structures to ensure that HCS is managed in the interests of the people of Jersey.

By directing, overseeing, and scrutinising the Department it will see improvements across existing key quality indicators<sup>3</sup> (plus other quality indicators that the new Board may adopt). This works to ensure the delivery of well governed person-centred services which meet the needs of Islanders, are safe, accessible, compassionate, cost effective, and of high quality.

It is unitary board, which is the predominate board model across healthcare organisations, in addition to many corporate bodies. There is a strong body of evidence that shows, when properly executed, unitary boards can deliver highly effective and collaborative leadership, helping build trust across the NED / executive director divide – which in turn fosters the culture of robust challenge essential to the delivery high quality, safe and financially sustainable patient care.

**4. What governance arrangements are in place within Health and Community Services at present noting that the previous board has been stood down at this stage?**

The Minister has engaged Professor Mascie-Taylor<sup>4</sup> as fixed-term Chair, on a 12-month contract of services (November 2022 to November 2023) to:

- a. assist in the establishment of the proposed new Board
- b. chair the proposed new Board in the months immediately after establishment (up to November 2023); and
- c. provide non-executive oversight of the Department pending establishment of the Board.

As fixed-term Chair, in the absence of a formally constituted Board, Professor Mascie-Taylor is meeting on a regular basis with:

- a. the HCS Chief Officer (Acting Chief Officer) and Head of the Change Team, who are reporting to him on key matters arising and performance of the Department.

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<sup>2</sup> Higgs review 2002 <https://www.ecgi.global/sites/default/files/codes/documents/higgsreport.pdf>

<sup>3</sup> ‘[Health and Community Services Quality and Performance Reports](#)’, Government of Jersey.

<sup>4</sup> Press Notice: [Chair appointed to establish new Health and Care Board](#). Government of Jersey.

- b. the Minister to advise and report back on key matters arising and the performance of the Department.

**5. What is the current oversight arrangement within HCS at present?**

In 2021, the Comptroller and Auditor General's (C&AG) report found that governance in HCS had "visibly moved forward" but noted that more progress was required. In disbanding the previous Board, the Minister has retained many of the improvements noted by the C&AG, this includes the committees<sup>5</sup> that underpinned the previous Board which are continuing to meet monthly to ensure ongoing oversight of the work of the Department.

The committees are now chaired by HCS executive directors, as distinct from assistant ministers. From March 2023, the committee chairs will be reporting to the fixed term Chair at "shadow" board meetings. In future, all Board committees will be chaired by non-executive directors.

The monthly committee meetings provide for oversight of the care groups and HCS services.

The Quarterly Quality and Performance Reports continue to be compiled and published. They are reviewed by fixed-term Chair, HCS's care groups, HCS's executive leadership team and assurance committees prior to publication. They will be scrutinised by the Board in future.

**6. What assessment has been done/will be done of the conflicts of interests of individuals that will be on the board?**

*Appointment to Board*

The draft terms of reference provide that the Minister shall not appoint a non-executive Board member who:

- is a Member of the States Assembly.
- is a Government of Jersey employee (or person similarly contracted).
- has a financial interest in, or may derive financial benefit from, the services provided or commissioned by the Department
- has a conflict of interest that would call into question their ability to undertake the role.

Potential candidates will be required to declare, at the point of application, that they are not ineligible (based on the grounds detailed above), and the executive search agency commissioned to support the recruitment process will undertake the necessary due diligence checks, including examining the candidates' declarations.

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<sup>5</sup> These includes the committees for Quality and Risk, Operations, Performance & Finance, and People and Organisational Development.

The recruitment process will be overseen by the Jersey Appointments Commission who will require the selection panel to consider whether there is a conflict that would call into question the candidate's ability to undertake the role. Where there is clear conflict, the candidate will be deselected. Where there is potential for perceived marginal conflict, the panel will ensure the Minister is appraised, in order that the Minister may determine whether that perceived marginal conflict means the Minister should not proceed to appointing the candidate as a Board member.

This same process was applied when appointing Professor Mascie-Taylor as fixed-term Chair.

#### *Post-appointment to the Board*

The draft terms of reference provide that all board members must declare, at the beginning of each meeting, any personal or business interest which may influence, or may be perceived to influence, their judgement on any particular matter; for example, if the Board is considering care provided to an individual known to a Board member in personal capacity. Any such conflicts of interest must be recorded in the minutes of the meeting, and the Chair must determine if that interest is such that the member must be recused.

The draft terms of reference also provide that the new Board must develop policies and procedures related to the management of conflicts of interest. These must accord with the provisions of the terms of reference which must be approved by the Minister and must be published.

#### **7. What was the purpose of the consultation process with PAC/PPC and why was it chosen to consult at this point in the timeline and not earlier?**

P170/2010<sup>6</sup> provides that the States Assembly must approve the establishment of any Board where members are remunerated, permitted access to sensitive information or where the Board will help shape government policy. It also provides that the Minister must, before finalising any proposal, consult PAC, PPC, and relevant Scrutiny panel to ensure "*appropriate oversight of the proposals.*"

In line with that proposition, the Minister provided PAC with a draft of the terms of reference as soon as that draft was available. As stated at the recent private briefing meeting on the topic of the new Board, the Minister wishes to lodge the proposed terms of reference as soon as reasonably practicable but would be content to delay for a short period of time if PAC wishes to provide further pre-lodging feedback. If PAC does wish to do so, please could you let me know on receipt of this letter.

#### **8. Within the C&AG report '[Governance Arrangements for Health and Social Care – Follow up](#)' a recommendation to publish an annual quality account was accepted. Can you confirm when this is intended to be presented for 2022 given the importance this will have for the proposed board?**

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<sup>6</sup> 'Shadow Boards and Ministerial Boards: approval by the States' ([P.170/2010](#)), lodged by Deputy Le Claire.

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et les Sèrvices Sociaux



This will be published by 3 April.

I trust the above responses are of use to the Panel and please let me know if you have any further questions as soon as you are able.

Yours sincerely,

**Deputy Karen Wilson**  
**Minister for Health and Social Services**

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1. **In relation to the Senior Independent Director, the PAC notes that this person would be appointed by the Board and responsible for appraising the Chair on behalf of the Minister. Could this give rise to a conflict of interest and, if so, how will this be managed?**

As noted, the ToR provide that the Senior Independent Director (SID) will be appointed by the Board. This is standard where the role of the SID also includes appraising the Chair which in Jersey will require engagement with the Minister.

The ToR provide that the Board, not the Chair, must appoint the SID in order to protect against collusion (ie. the Chair cannot simply choose from amongst the NED's who should act as SID). The ToR also provide that whilst the SID is accountable to the Chair as a NED, they are accountable to the Board collectively for their role as SID (ie. the Chair cannot 'dismiss' the SID because they do not wish to be appraised by them). It is the case that conflict of interests could arise between the SID and the Chair where, for example, they hold opposing views, where they are colluding with each other, where there is a personality clash or where they allow their loyalty to each other to interfere with proper execution of their duties. For this reason, the ToR provide that:

- the Board must review the SID appointment on a two yearly basis
- the Board may arrange for a suitability qualified person to appraise the performance of the SID in response to emerging concerns
- the Board may, in response to concerns, appoint a different SID
- the Board may develop operating procedures that set out how it will function with regard to managing any conflicts of interest that arise in relation to the functioning of the Board (including in relation to the role of the SID).

Clearly it is behoven on all Board members to address any conflicts responsibly and balance the interests of all individuals involved in a contemplative, proactive manner.

2. **Is there a requirement for board members to attend on island meetings?**  
Visibility of board members is paramount, and it is expected that board members will attend meetings in person, however, the ToR provide that members may attend remotely (see paragraph 57 of the ToR). This supports participation by board members if they face travel disruption etc.
3. **Given the current complications and complexities within HCS, is the estimated time allocation for the Chair and NEDs commensurate with the job at hand and how was this time requirement estimated?**

It is envisaged that the Chair will be contracted for 48 days per year (4 days per month) and the NED's will be contracted for 36 days per year (3 days per month), with an additional, estimated, 6 days per year for the SID. It is generally the case that on UK Health Boards, the Chair and NEDS are contracted for up to 36 days per year. An additional 12 days per year has been allowed for the Chair in recognition of the fact that the executive directors may require additional input / support in the first few years during the improvement phase. It should also be recognised that through 2023, the Change Team will also be providing additional capacity and experience to support HCS improvement.

The draft R&P, as previously circulated to PAC, has been amended to provide for the SID to work up to an additional, estimated, 6 days per year (over and above their 36 days as NED) to allow time for them to discharge their SID duties.

4. **The response from the Minister refers to the quality account being published by 3 April 2023, has this been published as the PAC has not yet seen anything relating to this.**

The document was published on 31 March 2023 and is available on gov.je [here](#).