

# STATES OF JERSEY



## HEALTH AND COMMUNITY SERVICES INTERIM BOARD

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Lodged au Greffe on 11th April 2023  
by the Minister for Health and Social Services  
Earliest date for debate: 23rd May 2023

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STATES GREFFE

## **PROPOSITION**

**THE STATES are asked to decide whether they are of opinion –**

to agree –

- (a) that the Minister for Health and Social Services should establish an interim non-statutory Health and Community Services Board providing for improved governance and oversight of the Health and Community Services Department; and
- (b) the proposed terms of reference to which that interim Board will function, as set out in Appendix 1 to the report accompanying the proposition.

**MINISTER FOR HEALTH AND SOCIAL SERVICES**

## REPORT

### Summary Report

1. The Minister for Health and Social Services (“the Minister”) set out her intention to establish a new, non-statutory, independently chaired Health and Community Services Board<sup>1</sup> in response to the 2022 *Review into clinical governance arrangements in secondary care*<sup>2</sup> undertaken by Professor Hugo Mascie-Taylor.
2. In deciding to establish a new Board, the Minister disbanded the existing HCS Board, chaired by the Minister with members including Health and Community Services (HCS) executive directors, invited partners from the voluntary and community and independent sectors, as well as representatives from primary care (although GPs report not attending as they perceived that the existing Board did not add value). Under these arrangements, the Minister as Chair had to single-handedly hold executive directors to account - a sub-optimal arrangement that was compounded by the existing Board assurance committees tending to act as internal management groups and an over reliance on verbal reports as opposed to written performance information.
3. The proposed Board is an interim board (“interim Board”), pending development of the legislation necessary to establish a statutory board with the fiduciary and decision-making powers commonly associated with health boards across the British Isles, Commonwealth, and the US. The [draft terms of reference](#) provide that the interim Board will be established for a maximum 3-year period pending development of legislation or, in the event legislation is not adopted by the States Assembly, pending a decision of the States Assembly to continue, disband, or amend the functions of the interim Board.
4. The interim Board will bring together the skills, knowledge and experience needed to critically examine and constructively challenge the Health and Community Services Department (“the Department”) (i.e. supplement the Minister as a “single, lone figure”<sup>3</sup>). 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, which will make it “easy to do the right thing and difficult to do the wrong thing”<sup>4</sup>.
5. By directing, overseeing and scrutinising the Department, the interim Board will promote the success of the Department, including overseeing improvements across existing key quality indicators<sup>5</sup> (as well as other quality indicators that the

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

<sup>2</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.

<sup>3</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.

<sup>4</sup> Good Governance Institute ([link](#)).

<sup>5</sup> ‘[Health and Community Services Quality and Performance Reports](#)’, Government of Jersey.

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.

6. The Minister has lodged [draft terms of reference](#) for the interim Board in accordance with [P.170/2010](#)<sup>6</sup> (see Appendix 1). [P.170/2010](#) 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. The Minister has consulted PPC, PAC, and Scrutiny in accordance with the requirements of [P.170/2010](#).
7. The interim Board's remit is restricted to services provided by the Department, including hospital, mental health, and adult social services. It does not include ambulance services (which are the responsibility of the Minister for Home Affairs) or Child and Adolescent Mental Health Service (CAMHS) and Children's services (which are the responsibility of the Minister for Children and Education). It is envisaged that the Board's remit may extend to these services at or before the 3-year point, pending discussion and agreement with the relevant Ministers and the States Assembly.
8. Once the interim Board is operational, consideration will be given to options for improved system-wide partnership working and governance, encompassing non-governmental providers, for example, GP's, dentists, pharmacists, care homes and voluntary and community groups. In 2021, the Comptroller & Auditor General<sup>7</sup> noted that the need to govern across the whole system - including co-production of strategy, service planning, development and commissioning, quality and safety assurance, and risk management – was increasingly important. Options for system-wide governance arrangements could potentially include:
  - a. an expanded remit for the interim Board with revised membership to include external service providers, or
  - b. a separate system-wide board whose members include representatives of providers from across the Island, including some members of the interim Board.
9. The proposed interim Board will be a unitary board whose members include:
  - a. independent non-executive directors (“NEDs”) with the skills and expertise to constructively challenge, provide leadership and aid strategic decision making; and

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

<sup>7</sup> ‘[Governance Arrangements for Health and Social Care – Follow up](#)’, published by the Comptroller & Auditor General, Jersey Audit Office.

- b. executive directors who are responsible for the day to day running of the Department.
10. The unitary board model will be recognisable to potential Board members and familiar to many HCS staff.
11. Proposed membership of the Board is an independent Chair, up to 5 independent NEDs with relevant backgrounds (e.g. medical, strategic finance) and up to 5 HCS executives. The number and balance of members is within the norms of other health boards including those that provide for small populations (such as Isle of Man, Isle of Wight, and Gibraltar). It is important to recognise that the interim Board will work across the whole of HCS, including adult social services and other community-based responsibilities, unlike many other health boards which provide governance for organisations responsible solely for hospital services.
12. Unitary boards are the predominate board model across healthcare organisations, in addition to many corporate bodies. It is widely accepted that 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.
13. The proposed interim Board will be a key part of an improved system of governance – which the Board will be tasked with developing – and which will run from the States Assembly to the Minister, to the Board and its committees, and 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>8</sup>. In this case, the structures to ensure that HCS is managed in the interests of the people of Jersey, with the NEDs acting as *custodians of the governance process*, standing back from the day-to-day running of HCS to ensure excellence in decision making and management.
14. The [draft terms of reference](#) require that there must be at least one more NED (including the Chair) than executive director, ensuring the balance is always in favour of independent members.
15. The interim Board will provide strategic leadership to the Department by:
  - a. directing, overseeing, and scrutinising the Department in matters related to:

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<sup>8</sup> ‘[Review of the role and effectiveness of non-executive directors](#)’, published by the European Corporate Governance Institute (ECGI).

- delivery of well governed, person centred care and services which meet the needs of Islanders
  - provision of safe, accessible, compassionate, and responsive care
  - improving quality, efficiency and cost effective of services, including the effective deployment of resources
  - management of risk (clinical, corporate, financial)
  - safeguarding people
  - delivery of the Minister’s plans, policies and directions, and compliance with decisions of the States Assembly.
- b. shaping a positive, inclusive culture for the Department, in which service users, families, carers, and staff feel safe, heard, and engaged and in which staff are empowered to do their best work. The recently appointed Freedom to Speak Up Guardian will have a direct line to the Board to appraise them of issues and matters arising<sup>9</sup>.
- c. investigating matters related to delivery of services, including the interface between HCS and other service providers.
- d. seeking assurance as to the Department’s performance across all areas of the Department’s activity.
- e. advising and making proposals to the Minister in respect of priorities for reform / improvement, public and operational policy, and resource requirements.
16. The interim Board will work constructively and in partnership with other health and care providers. It will have regard to other providers in all its activities and may include other providers in any committee or advisory group it establishes.
17. Its meetings will be in public and all papers will be published. The [draft terms of reference](#) place an explicit duty on the interim Board to ensure that all proposals presented to the Minister are appropriately informed by service users and carers.
18. The interim Board will collectively provide the knowledge, expertise, and skills necessary to direct the Department, and assure government and the public as to the quality and safety of the Department’s services - as distinct from the Minister, as a single, lone figure (who may have no professional knowledge of health service provision), having to assure the States Assembly and the public as to the quality and safety of the Department’s services. This includes providing the informed, robust challenge and questioning necessary to driving up standards.
19. As a non-statutory board, there are limits to its functions and powers. The interim Board cannot direct the Chief Officer of the Department to undertake actions that

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<sup>9</sup> Press Notice: [First Freedom to Speak Up Guardian appointed](#), Government of Jersey.

are contrary to the Chief Officer's duties as Accountable Officer, nor can it interfere with the duties of the States Employment Board or the Minister. In its interim form, the Board will work by advising the Minister as to actions to be taken.

20. The costs associated with the interim Board are described in the '[Financial and Staffing Implications](#)' section below. The annual recurring costs of remuneration and expenses for the Chair and NEDs is estimated to be £196,000; the rationale for investment being that poor governance hinders the adoption and implementation of policies and practices that drive improvement, including those that deliver better efficiency. As noted by the European Observatory on Health Systems "*Many good health policy ideas have foundered on poor governance; simple and complex policies alike have failed in systems for reasons that are not to do with money, or political will, but stem from troubles in governance*<sup>10</sup>".

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<sup>10</sup> '[Strengthening Health System Governance: Better policies, stronger performance](#)', published by the European Observatory on Health Systems.

## Full Report

1. The Minister for Health and Social Services (“the Minister”) set out her intention to establish a new, non-statutory, independently chaired Health and Community Services Board<sup>11</sup> in response to the 2022 *Review into clinical governance arrangements in secondary care*<sup>12</sup> undertaken by Professor Hugo Mascie-Taylor.
2. Following a recruitment process overseen by the Jersey Appointments Commission, the Minister subsequently engaged Professor Mascie-Taylor<sup>13</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 Board
  - b. chair the Board in the months immediately after establishment
  - c. provide oversight of the Health and Community Services Department (“the Department”) pending establishment of the Board.
3. The sub-optimal nature of HCS governance arrangements had been recognised before publication of the 2022 review. In 2017, the States Assembly had very narrowly rejected<sup>14</sup> proposals for a Partnership Board<sup>15</sup> due to concerns about lack of clarity as to function, purpose, and workability but, in so doing, the States Assembly was clear that the Department required an improved system of governance. Further to that, in 2018 the Comptroller and Auditor General (“C&AG”)<sup>16</sup> found HCS’s governance arrangements to be “inadequate” and, with respect to clinical governance, “not fit for purpose”.
4. In response to the C&AG’s review, the then Minister for Health and Social Services ([Deputy Renouf of St Ouen](#)) established a Department Board. This Board first met in mid-2019. In 2021 the C&AG, whilst noting that governance in HCS had “visibly moved forward” stated that more progress was required.
5. In late 2022, the Minister announced her intention to establish a new board (“interim Board”) and disband the existing HCS Board, which was chaired by the Minister with members including the Department’s executive directors, invited partners from the voluntary and community and independent sectors and primary care representatives (although GPs report not attending as they perceived that the

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<sup>11</sup> ‘Review of Health and Community Services (HCS) Clinical Governance Arrangements within Secondary Care: Minister’s Response’ ([R.117/2022 \(Res.\)](#)), presented by the Minister for Health and Social Services, States Assembly.

<sup>12</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.

<sup>13</sup> Press Notice: [Chair appointed to establish new Health and Care Board](#).

<sup>14</sup> ‘[Vote for Health and Social Care System: a new governance model - reference back](#)’, States Assembly. 24 members voted for the proposed board, 24 voted against proposed board and 1 abstained = not adopted as equal votes.

<sup>15</sup> ‘Health and Social Care System: a New Governance Model’ ([P.60/2017](#)), lodged by the Council of Ministers, States Assembly.

<sup>16</sup> ‘[Governance Arrangements for Health and Social Care](#)’, published by the Comptroller & Auditor General, Jersey Audit Office.



Board did not add value). Under these arrangements, the Minister as Chair had to single-handedly hold executive directors to account which resulted in executive directors "... [giving] reassuring, but unchallenged accounts of the way in which the organisation is working"<sup>17</sup>; a sub-optimal arrangement which was compounded by the Board assurance committees tending to act as internal management groups, along with an over reliance on verbal reports as opposed to written performance information<sup>18</sup>.

6. In disbanding the existing Board, the board committees have continued to meet on a monthly basis to ensure ongoing oversight of the work of the Department. These includes the Quality and Risk committee; the Operations, Performance & Finance committee; and the People and Organisational Development committee. The committees are now chaired by HCS executive directors, who, from March 2023, will be reporting to the fixed term Chair at "shadow" board meetings.
7. By directing, overseeing, and scrutinising the Department, the interim Board will promote the success of the Department, including oversee improvements across the Department's existing key quality indicators<sup>19</sup> (as well as 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.
8. The proposed interim Board will bring together the skills, knowledge and experience needed to critically examine and constructively challenge the Department (i.e. supplement the Minister as a "single, lone figure"<sup>20</sup>). 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 - making it "easy to do the right thing and difficult to do the wrong thing"<sup>21</sup>.
9. The Minister has lodged [draft terms of reference](#) for the Board, for consideration by the Assembly in accordance with P170/2010<sup>22</sup>. P170/2010 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.

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<sup>17</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.

<sup>18</sup> '[Governance Arrangements for Health and Social Care – Follow up](#)', published by the Comptroller & Auditor General, Jersey Audit Office.

<sup>19</sup> '[Health and Community Services Quality and Performance Reports](#)', Government of Jersey.

<sup>20</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.

<sup>21</sup> Good Governance Institute ([link](#)).

<sup>22</sup> 'Shadow Boards and Ministerial Boards: approval by the States' ([P.170/2010](#)), lodged by Deputy Le Claire, States Assembly.

10. The [draft terms of reference](#), as set out in Appendix 1, have been developed in consultation with specialist legal advisors, have been subject to review by the Law Officers Department and the Treasury to ensure functionality, and have been shared with Medical Staff Committee (HCS' senior clinicians), HCS trade union representatives and the Jersey Care Commission. The Minister has also consulted PPC, PAC and Scrutiny in accordance with the requirements of P.170/2010.

#### *Phased approach*

11. The proposed Board is an interim board, pending development of the legislation necessary to establish a statutory board with the fiduciary and decision-making powers commonly associated with health boards across the British Isles, Commonwealth, and the US. [The draft terms of reference](#) provide that the interim Board will be established for a maximum 3-year period pending development of legislation or, in the event legislation is not approved by the States Assembly, pending a decision of the States Assembly to continue, disband, or amend the functions of the interim Board.
12. The interim Board's remit is restricted to services provided by the Department, including hospital, mental health, and adult social services. It does not include ambulance services (which are the responsibility of the Minister for Home Affairs) or Child and Adolescent Mental Health Service (CAMHS) and Children's services (which are the responsibility of the Minister for Children and Education), but it is envisaged that the Board's remit may extend to these services at or before the 3 year point, pending discussion and agreement with the relevant Ministers and the States Assembly.
13. As a non-statutory board, it will have limited decision-making powers, as the Minister and office holders (for example, the Accountable Officer) will retain their statutory functions and duties. Its function is to lead the Department - within the limits of its non-statutory function - oversee the delivery of services and the management of risk, and provide advice to the Minister.
14. Further to the establishment of the non-statutory board (and subject to consultation and agreement with the States Assembly and key stakeholders), it is envisaged that legislation may be developed to establish the interim Board in law. This would provide the Board with formal fiduciary duties and powers to hold the Department to account, issue directions, and allocate resources.
15. The States Assembly may wish to consider, in partnership with colleagues in Guernsey, the potential for the Board to work pan-island at a future point.

#### *System wide governance*

16. Once the interim Board is fully operational and driving improved governance across the Department, consideration will also be given to options for improved

system-wide partnership working and governance, encompassing non-governmental providers, for example, GP's, dentists, pharmacists, care homes and voluntary and community groups.

17. In 2021, the Comptroller & Auditor General<sup>23</sup> noted that the need to govern across the whole system - including co-production of strategy, service planning, development and commissioning, quality and safety assurance and risk management – was increasingly important.
18. Options for system-wide governance arrangements could potentially include:
  - a. an expanded remit for the interim Board with revised membership to include external service providers, or
  - b. a separate system-wide board whose members include representatives of services providers from across the Island, including some interim Board members.
19. Key factors to be considered in determining whether a system-wide Board is established in addition to, or instead of, the HCS Board include:
  - a. whether there is sufficient confidence in the performance of the Department and maturity of its governance arrangements to allow the HCS Board to expand its remit across the system, and
  - b. the extent to which any statutory fiduciary duties of the HCS Board could, or should, apply to non-governmental providers.
20. The envisaged purpose of any system-wide Board would be to enable representatives from across the system to work together to improve the health and wellbeing of Islanders and reduce health inequalities, by:
  - a. developing a shared understanding of the needs of Islanders
  - b. co-producing services and solutions, and
  - c. providing system leadership to secure the collaboration necessary to delivering those solutions.
21. The wider functions and remit of any system-wide Board, including its membership, would be determined in consultation with key stakeholders, with consideration being given as to whether a system-wide board should work to influence the commissioning decisions of the Minister and other purchasers of services and solutions or be provided powers to make commissioning decisions through budgetary control.

#### *Unitary board*

22. The proposed interim Board will be a unitary board whose members include:

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<sup>23</sup> [‘Governance Arrangements for Health and Social Care – Follow up’](#), published by the Comptroller & Auditor General, Jersey Audit Office.

- a. independent non-executive directors (“NEDs”) with the skills and expertise to constructively challenge, provide leadership and aid strategic decision making, and
  - b. executive directors who are responsible for the day to day running of the Department.
23. The unitary model (also known as the one-tier model) is the predominate board model across British Isles, US, and Commonwealth healthcare organisations - in addition to many corporate bodies - where it is widely accepted that, when properly executed, it can deliver more effective and collaborative leadership that the supervisory model.
24. A significant perceived advantage of the unitary board system is that it operates across the whole organisation, including executive board members who would otherwise generally be focused only on delivering the duties associated with their role. This cross-organisation remit creates greater knowledge, involvement, and commitment to Board decisions<sup>24</sup>, and helps build trust across the NED / executive director divide – which in turn fosters a culture of robust challenge, which is essential to the delivery high quality, safe and financially sustainable patient care. Furthermore, a unitary board model will be recognisable to potential candidates for the interim Board and familiar to many HCS staff.
25. It should be noted that the [draft terms of reference](#) require that there must be at least one more NED (including the Chair) than executive director, ensuring that the balance is always in favour of independent NEDs as opposed to Department executives.

#### *A system of governance*

26. The proposed interim Board will be a key part of an improved system of governance – which the Board will be tasked with developing – and which will run from the States Assembly to the Minister, to the Board and its committees, and 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>25</sup>. In this case, the structures to ensure that HCS is managed in the interests of the people of Jersey, with the NEDs acting as *custodians of the governance process*, standing back on the day-to-day running of HCS to ensure excellence in decision making and management.

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<sup>24</sup> ‘[Guidance on Board Effectiveness](#)’, published by the Financial Reporting Council (FRC).

<sup>25</sup> [Review of the role and effectiveness of non-executive directors](#)’, published by the European Corporate Governance Institute (ECGI).

*Board members*

27. The [draft terms of reference](#) provide for 1 Chair, up to 5 NEDs and up to 5 Executive Directors, although the Minister may increase the number of Board members if satisfied that there are compelling grounds to do so, and having consulted the Council of Ministers.
28. Board members are collectively responsible for the operation of the interim Board, participating in discussion, reviewing evidence, and provide objective input. On the rare occasions that consensus is not reached, the Chair may determine that a matter should be voted on. Each member of the Board shall have one vote and decisions shall be reached by a majority of members present. The [draft terms of reference](#) set out arrangements where a Board member is conflicted.
29. Detailed consideration has been given to the overall number of Board members as there is a desire to ensure the Board is an optimal size for good, effective decision-making (i.e. it is not too large or unwieldy), that its membership encompasses the skills sets needed to ensure informed, effective decision-making and, at the same time, ensure that it is cost effective.
30. As set out in the table below, the proposed membership is within the norms for health boards of varying jurisdiction size. Indeed, there is little variation in the number of board members between large and small jurisdictions because, regardless of the size of the population served, a health service board still requires access to the same core skill sets (for example, financial, organisational development and clinical expertise).

	Chair	NED	Other non-executive members	Total	Executive members <sup>26</sup>	Total membership
United Lincolnshire hospitals 720,000 population	1	5	2 associate NEDs	8	7	15
Wye Valley NHS trust 186,000 population	1	5	1 associate NED	7	9	16
Manx Care (Isle of Man) 85,000 population	1	5	0	6	5	11
Gibraltar health authority 33,000 population	1	5	0	6	N/A	N/A
Isle of Wight 141,000 population	1	6	0	7	10	17

<sup>26</sup> It is not possible to ascertain from publicly available information how many of the executive members of the boards have Board voting rights, as opposed to Board attendance rights.

31. When considering the overall size of the interim Board, it is important to recognise that it will work across the whole Department, which includes all hospital, mental health, community, and social work delivered by, or commissioned by, the Department. This remit is significantly more extensive than that of many other health boards which provide governance for organisations focussed solely on providing hospital services.
32. The Minister is commencing recruitment of NEDs to allow the interim Board to be established in the shortest possible timeframe. Appointment of shadow NEDs and officer holders, pending Assembly approval, is accepted practiced. Examples include:
  - a. Children’s Commissioner
  - b. Jersey Sport Board
  - c. Jersey Ports Board.
33. The recruitment specification will set out that all NEDs must have proven Board level experience in complex organisations whether at a national / international level, and previously have been personally accountability for corporate budgets. They must:
  - a. have acknowledged expertise in their own domain (for example, nursing) and other domains (for example, organisational development)
  - b. be able to demonstrate in-depth understanding of the role of NEDs, and
  - c. have successfully driven significant change in a complex organisation, preferably within the health care sector.
34. In addition to senior board level experience, at least one NED must have a medical background; a nursing background; a social services background and a background in strategic finance, in order that they can chair the audit committee.
35. The [draft terms of reference](#) exclude certain categories of people from being appointed as NEDs broadly mirroring the exclusion categories commonly set out in Jersey law for statutory office holders. A person cannot be appointed as a NED if they are:
  - a. a member of the Assembly
  - b. an employee of the Government of Jersey (or person similarly contracted)
  - c. a person who has a financial interest in, or may derive financial benefit from, the services provided or commissioned by HCS, or
  - d. a person who has a conflict of interest that would call into question their ability to undertake the role.
36. The NED recruitment process is being overseen by the Chair of the Jersey Appointment Commission. A recruitment panel will shortlist and interview

candidates. The panel will include the fixed term Board Chair, the CEO for the Government of Jersey, an external health service expert, and a local patient/user representative. The recruitment panel will recommend potential candidates, who will have an informal meeting with Minister prior to her determining who to engage.

37. The [draft terms of reference](#) provide others (for example, other members of HCS staff or external partners) may be invited to attend Board meetings on a regular or meeting by meeting basis,

*Role and purpose of interim Board*

38. The [draft terms of reference](#) set how the Board will conduct itself.
39. The interim Board will provide the collective knowledge, expertise, and skills needed to lead the Department, ensure informed, robust challenge, and assure the quality and safety of services - as distinct from the Minister, as a single, lone figure who may have no professional knowledge of health service provision.
40. The interim Board will provide strategic leadership to the Department by:
- a. directing, overseeing and scrutinising the Department in matters related to:
    - delivery of well governed, person centred care and services which meet the needs of Islanders
    - provision of safe, accessible, compassionate and responsive care
    - improving quality, efficiency and cost effective of services, including the effective deployment of resources
    - management of risk (clinical, corporate, financial)
    - adherence to the systems of clinical governance and control
    - safeguarding people
    - delivery of the Minister's plans, policies and directions, and compliance with decisions of the Assembly.
  - b. shaping a positive and inclusive culture for the Department, in which service users, families, carer and staff feel safe, heard, and engaged, and in which staff and empowered to do their best work. The recently appointed Freedom to Speak Up Guardian will have a direct line to the Board to appraise them of issues and matters arising<sup>27</sup>.
  - c. investigating matters related to delivery of services, including the interface between the HCS and other service providers.

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<sup>27</sup> Press Notice: [First Freedom to Speak Up Guardian appointed](#), Government of Jersey.

- d. seeking assurance as to the Department's performance across all areas of the Department's activity.
  - e. advising and making proposals to the Minister on matters related to service improvement and strategic direction, priorities for reform / improvement (including those arising from external reports and review); public and operational policy; best deployment of resources etc. Where those proposals are adopted, it will oversee delivery.
41. The Board will work constructively, and in partnership with other health and care providers. It will have regard to interface between the Department and other providers in all its activities and may include other providers in any committee or advisory group it establishes.
42. As a non-statutory board, there are limits to its functions and powers. The interim Board cannot direct the Chief Officer of the Department to undertake actions that are contrary to the Chief Officer's duties as Accountable Officer, nor can it interfere with the duties of the States Employment Board or the Minister. In its interim form, the Board will work by advising the Minister as to actions to be taken.

#### *Transparency*

43. The public may attend and observe all Board meetings. Whilst they may not ask questions during a Board meeting, once the meeting has ended, they may ask questions about any matter discussed in the meeting.
44. All papers, agendas, and minutes will be published. This will include data on the performance of the Department (such as waiting lists), the safety of its services (such as infection control, serious incidents, staffing levels), financial management, and compliance.
45. The exception will be where an agenda item relates to a matter which the Chair determines must be considered in private to prevent harm, protect the interest of individuals, or is commercially sensitive information.

#### *Public and user engagement*

46. In addition to conducting its business in public, the [draft terms of reference](#) place an explicit duty on the interim Board to ensure that all the proposals it makes to the Minister are appropriately informed by services users and their carers.
47. This will require the Board to:
- a. put in place effective forums for engaging with the wider public and supporting their participation in reviews of service quality and the development of new services, and



- b. learning from complaints and ensuring that feedback from the [Patient Advisory Liaison Service](#) (PALS) is properly captured, understood, and used to inform service improvement.

#### *Structure and working practice*

48. Matters relating to structure and working practice of the interim Board are set out in the [draft terms of reference](#). The interim Board is required to establish an audit committee, chaired by a NED who has a background in finance, to provide assurance as to financial reporting, internal control, and risk management within the Department. The Board may also establish any other advisory groups and assurance committees it deems necessary, with the committees being chaired by a NED and including members from outside the Department and Government of Jersey, as appropriate.
49. The [draft terms of reference](#) also provide that any interim Board operating procedures, developed by the interim Board, must be approved by the Minister and must be published. Interim Board operating procedures, which must accord with the provisions of the [draft terms of reference](#) could, for example, detail how the Board will conduct business at its meetings.

#### *Lines of accountability*

50. The interim Board will provide the foundations for an effective system of governance based on structured, informed decision-making, and clear lines of accountability. Accountability is about more than knowing who is to blame when something goes wrong. It is about how the Minister determines and specifies what the Minister wishes to achieve on behalf of Islanders; how the interim Board works to deliver this; how the interim Board ensures good performance, and how action is taken when performance is unsatisfactory.
51. The interim Board will strengthen the Department's accountability to the Minister, and hence to the people of Jersey, by providing a clear conduit between the Minister and the Department.

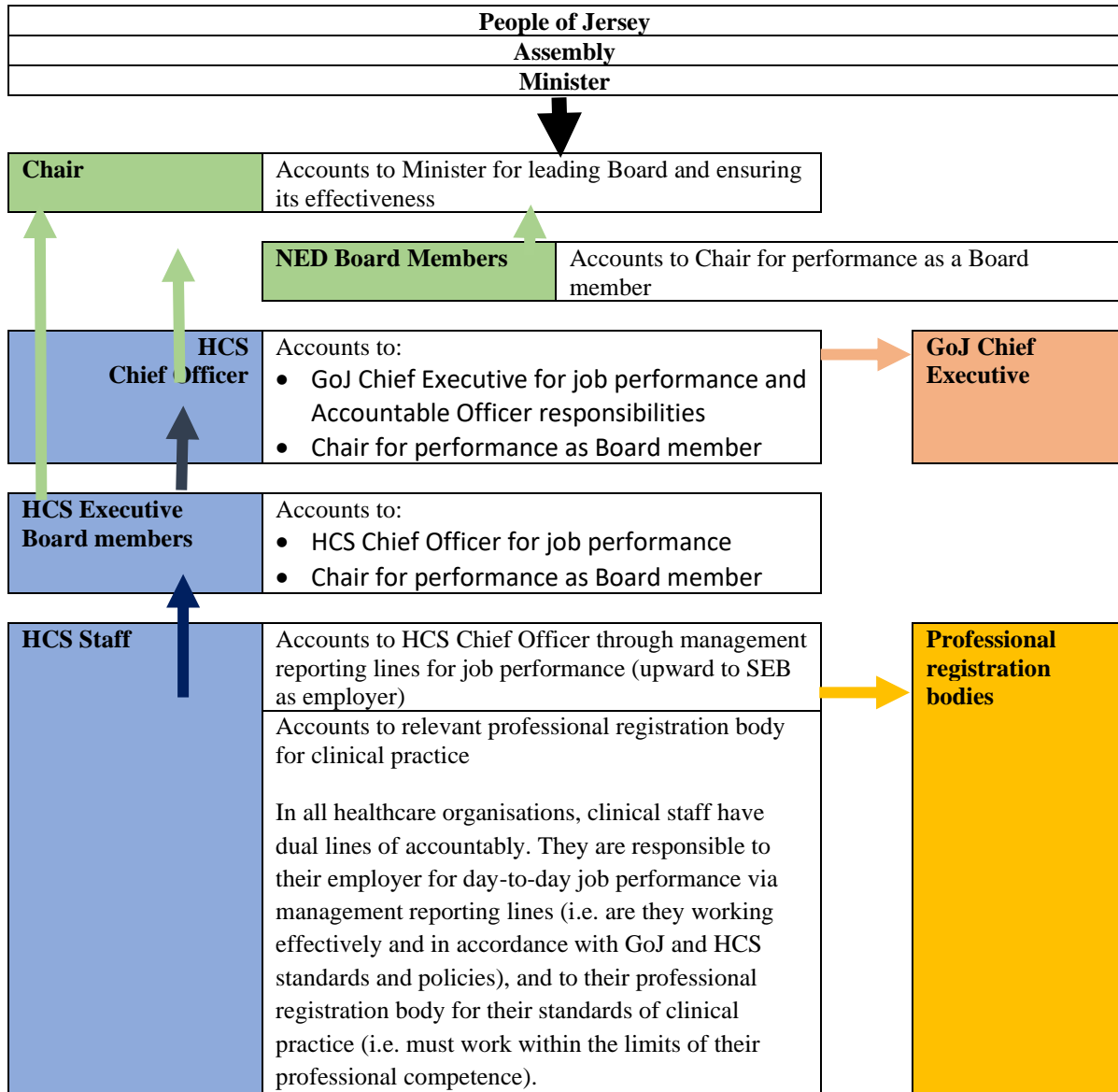
> The Minister has determined that the Department must deliver safe, effective, accessible, compassionate, and well governed patient centre services, which meet the needs of islanders and must do efficiently and effectively.

> The Board provides advice to the Minister on how this may be achieved, the Minister determines what action to take, the Board oversees delivery of that action and, through Departmental management structures, ensures good performance and delivery.

> The Department reports to the interim Board on delivery, the interim Board collectively brings together the skills, knowledge and experience need to critically examine and

constructively challenge the Department’s account, the interim Board reports to the Minister.

52. The [draft terms of reference](#) set out the responsibilities of Board members and associated lines of accountability as represented below:



## Financial and Staffing Implications

53. Financial and staffing implications include:

	<b>2023 costs</b>	<b>Recurring annual cost</b>
Chair remuneration	£172,800 (3 days per week at £1,440 per day)	£70,000 (48 days per year)
Chair expenses	£30,800	£9,000
Chair recruitment (to commence in time for end of fixed-term Chair's contract)	£15,000	£0
NED remuneration	£37,500 (up to 36 days per year/ £15k pa per NED / half year cost)	£75,000 (up to 36 days / £15k pa per NED / full year cost)
NED expenses	£14,750	£36,000
Senior Independent Director / Chair of Audit Committee and Chair of Board committees – estimated additional remuneration and travel allowance	£8,000	£16,000
Secretariate support	HCS existing resources	HCS existing resources
NED recruitment	Up to £65,000	-
<b>Total</b>	<b>£343,500</b>	<b>£206,000</b>

54. The Government Plan 2023-26 provided up to £1.5m<sup>28</sup> in 2023 to support Health and Community Services Turnaround. This includes the remuneration and expenses associated with the fixed term Chair in 2023 and the recruitment costs for a permanent Chair and NEDs in 2023.

55. Costs for 2024 onwards will be proposed within the 2024 Government Plan. Chair and NED remuneration levels are based on health boards of a similar design.

56. The recurring annual remuneration for the Chair is £70,000, which is higher than current NHS Chair remuneration (c.£51,000) on the basis that an NHS Chair generally commits 36 days per, whereas the HCS Chair is asked for an extended commitment of 48 days per year due to the scale of the improvement task. Whilst

<sup>28</sup> 'I-HCS-GP23-015', Page 106 of the [Government Plan 2023-26](#), Government of Jersey.

the annual remuneration is higher, the day rate for the HCS Chair is equivalent to some NHS Chairs (£1,440 per day). The full year remuneration for the NEDS is £15,000, which is the upper range of NHS NED remuneration (c. £13,000 -£15,000) for an equivalent time commitment of up to 36 days per year. An additional allowance is also made for the Senior Independent Director to work up to an additional 6 days per year. Due to the nature of the Senior Independent Director's role, it is difficult to estimate the total number of additional days required so this may be subject to change.

57. The rationale for investment in the Board is that poor governance is known to hinder the adoption and implementation of policies and practices that drive improvement. As noted by the European Observatory on Health Systems “*Many good health policy ideas have foundered on poor governance; simple and complex policies alike have failed in systems for reasons that are not to do with money, or political will, but stem from troubles in governance*<sup>29</sup>”.

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<sup>29</sup> [‘Strengthening Health System Governance: Better policies, stronger performance’](#), published by the European Observatory on Health Systems.

# Appendix 1: Terms of Reference for the Health and Community Services Interim Board

## Status and authority of the Board

1. The Minister for Health and Social Services (“the Minister”) has decided, with the agreement of the States Assembly, to establish a Health and Community Services Board (“the Board”).
2. The Board is non-statutory (i.e. with no legal powers) with responsibility for assuring the Minister as to the quality, safety, performance and development of the Department’s services and associated risks.
3. The Board will work across the Government of Jersey’s (“GoJ”) Health and Community Services Department (“the Department”). This includes all hospital, mental health, community and social work services delivered by the Department or commissioned by the Department, whether or not in Jersey. This does not include CAMHS or children’s services, which are the responsibility of the Minister for Children and Education or the Ambulance Service, which is the responsibility of the Minister for Home Affairs.
4. The Board shall work in a co-operative and constructive manner with the Minister, the Department and other Ministers and Departments. It will collaborate with all relevant partners in order to solve problems and ensure the provision of safe, effective, accessible, compassionate, and well governed patient centred care which meets the needs of Islanders. This includes other service providers, services users, and carers.
5. The Board is authorised to seek information it requires, in connection with its functions, from the following persons. These people must co-operate with any such request unless doing so conflicts with any other legal obligation or there are no appropriate data sharing arrangements in place:
  - a. any employee of the Department (or person similarly contracted); and
  - b. any GoJ employee whose job requires them to support the functions of the Department (or person similarly contracted).
6. The Board will provide information to, and co-operate with, Scrutiny Panels and any relevant Committees or Boards of the States Assembly, all relevant public service oversight bodies or mechanisms including, but not limited to, Jersey Audit Office, GoJ internal audit, external auditors engaged by GoJ, Jersey Care Commission, Jersey Appointments Commission, Information Commissioner, Law Officers’ Department or any such person as and when appropriately directed by the Minister. In providing information the Board must consider confidentiality and data protection requirements.
7. Decision-making in respect of all public functions shall be reserved to the Minister, an Assistant Minister or an Officer in accordance with the [States of Jersey Law 2005](#).

## **Terms of reference**

8. These terms of reference set out the membership, role and reporting arrangements of the Board. The Board will work at all times in accordance with them.
9. A duly convened meeting of the Board at which a quorum is present shall be competent to exercise all or any of the responsibilities and tasks assigned to the Board by these Terms of reference.
10. These terms of reference are valid for a maximum 3-year period. At the end of that period the Minister must determine, with the agreement of the Assembly, whether the Board should:
  - a. continue to operate under these terms of reference, or amended terms of reference, or
  - b. be disbanded.
11. Prior to the end of the 3-year period:
  - a. the Board must be disbanded if a statutory board is established by the Assembly, or may be disbanded for any reason that the Minister deems relevant, with the agreement of the States Assembly
  - b. the Minister may amend these terms of reference whether or not on the recommendation of the Board, with any substantive changes being agreed by the Assembly.

## **Responsibilities and tasks of the Board**

12. The Board will provide strategic leadership to the Department.
13. The Board will direct, oversee and scrutinise the Department in matters related to:
  - a. delivery of well governed, person centred services which meet the needs of Islanders, are safe, accessible, cost effective and of high quality
  - b. effectiveness of, and adherence to, systems of governance within the Department (and where appropriate within GoJ) which:
    - enable effective management of service and clinical risks and safeguarding delivery
    - support management of corporate and financial risks
    - ensure operational effectiveness, efficiency, and economy, and
    - support best deployment of resources and provision of cost-effective services
  - c. compliance with departmental and relevant GoJ policies and processes, in addition to all relevant statutory requirements
  - d. preparedness and responsiveness to independent inspection and compliance with regulatory standards

- e. delivery of the Minister's plans, policies, and directions by the Department
  - f. compliance with decisions of the Assembly, as directed by the Minister.
14. The Board will shape a positive, inclusive culture for the Department, in which service users, families, carers and staff feel safe, heard, and engaged, and in which staff are empowered to do their best work.
15. The Board will work in partnership with service users carers, stakeholders, other providers and other GoJ departments to provide safe, effective, accessible, and well governed patient centred care.
16. The Board will investigate matters relating to the delivery of services, or potential delivery of services, including the interface between the Department and other providers of health and social care services, whether or not in Jersey, and advising the Minister on any necessary steps.
17. The Board will seek assurance as to the Department's performance across all areas of the Department's activity.
18. The Board will make proposals to the Minister with respect to:
- a. departmental strategy
  - b. safeguarding of service users and staff
  - c. plans / policies related to the delivery of services by the Department
  - d. the commissioning of services or the interface with the services of other providers
  - e. plans / policies related to workforce development, engagement, deployment, sustainability, and departmental culture (and, as appropriate, through the Minister liaise with the States Employment Board as the employer)
  - f. enhancement of systems of internal control (corporate, clinical and financial), quality targets and reporting requirements
  - g. the financial, physical, and human resources required by the Department
  - h. prioritisation of actions and recommendations arising from internal and external reviews and audits, and
  - i. other matters considered relevant by the Board.
19. The Board will ensure that proposals made to the Minister are appropriately informed by services users, and that the Department has in place effective forums for engaging with all sections of the public, including children and young people, ensuring their voices are heard and they are supported to participate in reviews of service quality and the development of new services.

20. The Board will oversee implementation of proposals approved by the Minister, and make the decisions required to deliver change and improvements within the Department, in accordance with:
  - a. the parameters of a plan or policy determined by the Minister, and
  - b. the remit and responsibilities of the Board.
21. Such other purposes as the Minister mandates the Board to undertake where those purposes are within the scope of the Minister's powers.
22. For clarity:
  - a. the Board's remit is across all services provided by the Department, including hospital, mental health, and adults social services
  - b. the Board's remit includes leading on clinical, operational, and service matters but does not generally include leading on wider public policy (including strategic health policy and public health policy), and
  - c. only the Minister or the Board may initiate a programme of work by the Board.

### **Delivery**

23. In delivering its tasks the Board may:
  - a. make standing and ad hoc requests for information, explanations, or professional opinions regarding any aspect of services delivered or commissioned by the Department, having had regard to the resources of the Department
  - b. require the Chief Officer of the Department to bring to the Board for its consideration, any proposal, strategy, policy, information or explanation, related to the work of the Department, that the Board deems relevant to the fulfilment of the Board's role and task. This includes requiring the Chief Officer to instruct any employee of the Department (or person similarly contracted) to attend a meeting of the Board to provide information or explanations
  - c. request the Chief Executive Officer to instruct other relevant GoJ employees to bring to the Board for its consideration, any proposal, strategy or policy that the Board deems relevant to the fulfilment of the Board's role and tasks, and
  - d. make proposals to the Minister in respect of any measure involving expenditure of public funds which in the Board's opinion is necessary or expedient in fulfilling its role. In making such proposals, the Board must have regard to the Public Finances Manual and the duties of the Accountable Officer.



24. In delivering its tasks the Board will:

- a. produce and publish an annual work plan including key performance indicators. The work plan must be agreed by the Minister prior to publication
- b. have regard to the resources and responsibilities of the Department and all relevant statutory duties of the Minister and officers, including associated policies and directions
- c. have regard to the GoJ's key policy commitments including to children and young people and to sustainability and decarbonization
- d. act in accordance with the decisions of the Minister, the Council of Ministers, the States Employment Board, the Treasury and Exchequer and all other relevant office holders
- e. make the best use of the knowledge and skills of non-executive directors and executive directors
- f. ensure the Board's behaviour is consistent with the values of the Department and that high standards of personal integrity are maintained by Board members and staff, and
- g. ensure good communication between the Board, staff, all services users, carers, other providers and the wider community. To include the timely, effective dissemination of information and meaningful mechanisms for feedback.

#### **Operating procedures**

25. The Board may develop any operating procedures, setting out how the Board and its advisory groups and committees will function, that the Board deems necessary. All Board operating procedures must accord with the provisions of these Terms of Reference, must be approved by the Minister and must be published.

#### **Advisory groups and committees**

26. In delivering its tasks, the Board must establish an audit committee which reports to the Board and provides assurance as to financial reporting, internal control, and risk management within the Department. The audit committee must be chaired by a non-executive director who has a background in finance. That non-executive director cannot simultaneously hold the role of senior independent director. In establishing the audit committee, the Board must have regard to the terms of reference for the GoJ Risk and Audit Committee.

27. The Board may also establish any other advisory groups and assurance committees as required for the purposes of preparing advice, seeking assurance, or making decisions in respect of items of business that the Board would otherwise undertake.

28. The Board may delegate its tasks, as appropriate, to an advisory group or committee it establishes, providing it does so in accordance with the approved terms of reference for that advisory group or committee.
29. The Board must develop terms of reference for all these advisory groups and committees for approval by the Minister prior to establishment. The terms of reference will set out the tasks to be delegated to the advisory group or committee and the associated reporting requirements (i.e. the recommendations, decisions or findings which must be reported to the Board, and whether they are reported for approval, for information or for presentation to the Minister).
30. In general, the Board will delegate to advisory groups or committees responsible for overseeing the development of strategy and policy and / or monitoring the delivery of agreed strategy and policy in the areas for which the advisory group or committee is responsible. The Board will only delegate the develop of strategy or policy which accords with the remit of the Board.
31. The Board is responsible for maintaining any groups or committees it establishes, and for ensuring they operate effectively and in accordance with their terms of reference. At the last meeting of each financial year, the Board must review the performance of the advisory groups or committees, including membership, and may propose to the Minister any amendments to the terms of reference which the Board deems necessary.
32. The Board will appoint members to all advisory groups and committees, this may include members from outside the Department and GoJ (for example, external providers or advisors).
33. All advisory groups and committees must be chaired by a non-executive director and must include at least one executive director.

## **Board membership**

34. The Board is a unitary board. It includes non-executive directors with the skills and expertise to constructively challenge, provide leadership and aid strategic decision making, and executive directors responsible for the day to day running of the Department.
35. The Board shall initially have, in addition to a Chair, up to 5 non-executive directors and up to 5 executive directors, who are employees of the Department (or persons similarly contracted). The Chair and non-executive directors will be appointed by the Minister (see Appendix 1).
36. The Minister may increase or decrease the number of Board members (or appoint different departmental post holders as executive Board members) at the request of the Chair - and having consulted the Council of Ministers - if satisfied that there are grounds to do so. The Minister must, however, ensure that the number of non-executive directors, including the Chair, is always at least one more than the number of executive directors. This is to ensure the balance is always in favour of independent non-executives.
37. At least one of the non-executive directors should have:

- a. a medical background
  - b. a nursing background
  - c. a background in social services
  - d. a background in strategic finance.
38. The executive director members should, where possible given the requirement to maintain the balance in favour of non-executives, include the Chief Officer of the Department and those officers who are responsible for department wide functions including medical, nursing and finance.
39. The Chair, executive directors and non-executive directors are referred to in these terms of reference as members of the Board.

## **Responsibilities of Board members**

### **General duties**

40. The general duty of the Board, and all board members individually, is to:
- a. support the Department to improve the health and wellbeing of Islanders through the provision of safe, effective, accessible, and well governed patient centred care
  - b. ensure the Board adds value to the Department and, by extension, to Jersey
  - c. ensure the Board operates in accordance with its terms of reference, and
  - d. ensure the Board delivers the actions set out in its annual work plan.
41. Board members are collectively responsible for the decisions and activities of the Board. This includes a responsibility to constructively challenge during Board meetings and to help develop proposals and strategies for improvement.
42. Board members are expected to attend a minimum of 75% of Board meetings unless absence is agreed by the Chair.

### **Chair**

43. The Chair is responsible for the decision making and performance of the Board (including against its annual work plan), and for holding the Board to account (both collectively and individual members) for discharging the Board's duties and responsibilities. The Minister holds the Chair to account for this responsibility.
44. The Chair will carry out the annual appraisal of other non-executive Board members and report to the Minister on the outcomes. In so doing, the Chair may meet with other Board members (non-executive and executive members) to discuss the non-executive member's performance. The Chair will account to the Minister for this responsibility.

45. The Chair will meet with the GoJ Chief Executive to discuss the performance of the Chief Officer of the Department, when requested to do so by the GoJ Chief Executive, who is responsible for the annual appraisal of the Chief Officer of the Department.
46. The Chair will meet with the Chief Officer of the Department to discuss the performance of other executive board members, when requested to do so by the Chief Officer of the Department, who is responsible for the annual appraisal of other executives.

### **Chair and non-executive directors**

47. The Chair and other non-executive directors are responsible, on behalf of the Minister and GoJ Chief Executive, for monitoring executive management of the Department including executive directors who are Board members. The Minister holds them to account for this responsibility. This includes:
  - a. scrutinising the performance of executive management in meeting goals and objectives and satisfying themselves that systems of internal controls and governance (corporate, clinical and financial) are robust and are implemented, and
  - b. ensuring the effectiveness of management arrangements.
48. The Chair and other non-executive directors are also responsible for bringing a range of varied perspectives and experiences to strategy development and decision making.
49. For clarity: the Board must have regard to the duties of the Accountable Officer and the Accountable Officer's lines of accountability. As such, the Board cannot direct the Chief Officer of the Department to undertake any action or make any decision that is contrary to their duties as Accountable Officer, and cannot direct any executive director, or other staff members, to undertake any action or make any decision that is contrary to their duties as GoJ employee.

### **Chief Officer of the Department**

50. The Chief Officer of the Department is:
  - a. accountable to the Board, in their role as a Board member, for meeting Board objectives
  - b. responsible for providing information and support to the Board, and making proposals to the Board, for the Board to consider and determine whether to recommend to the Minister
  - c. responsible for implementing decisions of the Board, where those decisions accord with their responsibilities as accountable officer and GoJ employee. In the event that the Board wishes to take an action that involves a transaction which the Chief Officer believes will infringe on their responsibilities as accountable officer, the Chief Officer should seek

direction from the Minister and, if so directed, should set out in writing to the Minister the reason for their objection in accordance with the provisions of the public finances manual

- d. accountable to the GoJ Chief Executive, in their role as accountable officer, for the performance of the Department and delivery of their performance and development objectives, and
- e. answerable to the States' Public Accounts Committee for the performance of their accountable officer function, in accordance with the Public Finances (Jersey) Law 2019.

### **Executive Directors**

51. Executive Directors who are Board members are:

- a. accountable, in their role as a Board member, for meeting Board objectives
- b. responsible for implementing decisions of the Board, where those decisions accord with their responsibilities as GoJ employees
- c. accountable to the Chief Officer of the Department for:
  - supporting the Chief Officer in the provision of information and support to the Board, and for making proposals to the Board, and
  - delivery of their performance and development objectives.

### **Senior Independent Director**

52. The Senior Independent Director will have the following duties, in addition to the general duties of non-executive director:

- a. be available to Board members (executive and non-executive) if they have concerns about the performance of the Board, the Board's compliance with its Terms of Reference, or the welfare of the Department, which contact through the usual channels of Chair or Chief Officer of the Department, has failed to resolve, or for which such contact is inappropriate
- b. where appropriate, to ensure that concerns raised by Board members are communicated to the other non-executive directors and, as necessary, to the Minister and / or the Board as a whole
- c. work, as appropriate, with the Chair and / or other Board members and / or the Minister to resolve those concerns, and
- d. carry out the annual appraisal of the Chair, on behalf of the Minister, and make a report to Minister on the outcome. Prior to doing so the Senior Independent Director will usually meet with the Minister to discuss any performance matters the Minister may wish the Senior Independent Director to consider. As part of the appraisal process, the Senior

Independent Director may meet with the following people in the absence of the Chair, to discuss the Chair’s performance:

- other Board members, and
- other stakeholders as directed by the Minister or, which the Senior Independent Director considers relevant to the appraisal process

53. The Senior Independent Director is accountable to the Chair as a non-executive Board member and to the Board collectively as the Senior Independent Officer. Neither the Chair, not the Board can direct the Senior Independent Officer in their capacity as Senior Independent Officer. The Board:

- a. must appoint the Senior Independent Director (Appendix 1)
- b. must review the appointment every two years
- c. may, in the event of concerns about the performance of Senior Independent Director, appoint another non-executive director as Senior Independent Director
- d. may arrange for a suitably qualified, independent person to appraise the performance of the Senior Independent Director, whether as part of the two-yearly review or in response to emerging concerns.

<b>Role</b>	<b>Accountable to</b>	<b>Is appraised by</b>
Chair	Minister	Senior Independent Director, on behalf of the Minister, drawing on views from other Board Members and Minister
Senior Independent Director	Board	The Board, who may appoint a suitably qualified, independent person to appraise the Senior Independent Director on their behalf
NEDS	Chair	Chair, drawing on views from other Board members
Chief Officer	GoJ Chief Executive	GoJ Chief Executive, drawing on views of Chair and Board members
Executive Directors	Chief Officer	Chief Officer, drawing of views of Chair and Board members

## Meetings

54. The Board will meet at least 6 times a year. The Board may meet at other times during the year as agreed between the members of the Board or as otherwise requested by the Minister. It is envisaged that it will meet up to 10 times in the first 12 months post appointment of members.

55. Only members of the Board have the right to attend Board meetings, but the Board may invite other persons, including other executive directors, and/or external advisers to attend all or part of any meeting, as and when appropriate.
56. Other attendees may be invited to attend on a regular or meeting by meeting basis.
57. Any member or attendee may participate in Board meetings by secure telephone or video conference, provided that all members are able to contribute to discussions and decisions. Participation in a meeting via electronic means shall constitute presence in person at this meeting.
58. The public may attend and observe all Board meetings except for matters which the Chair determines should be considered in private, for example, to prevent harm, protect the interest of individuals or consider commercially sensitive information. The public may not ask questions during a Board meeting but, once the meeting has ended, they may ask questions with the permission of the Chair. The Board must make arrangements to ensure that all people, including children and young people, are supported to ask questions at the end of Board meetings.
59. In the unlikely event that neither the Chair nor Deputy Chair can be present, the non-executive directors who are present will determine which non-executive director will act as Chair for the duration of the meeting (“Acting Chair”). An executive director cannot act as Chair.

## **Quorum**

60. No business shall be transacted at a meeting unless:
  - a. three non-executive directors (which may include the Chair) and two executive directors are present, and
  - b. there is at least one more non-executive director (which may include the Chair) than executive director.
61. The exception to the above being where the Chair determines that the circumstances of a matter are such that non-executive directors should meet without executive directors, in which case:
  - a. there must be at least four non-executive directors (which may include the Chair), and
  - b. the Chair must notify the Minister of the circumstances before the Chair calls the meeting.
62. If any member, including the Chair, is disqualified from participating in a meeting due to a conflict of interest they shall not count towards the quorum.

## **Voting**

63. The members of the Board have a collective responsibility for the operation of the Board. They will participate in discussion, review evidence, and provide objective input to the best of their knowledge and ability, and endeavor to reach consensus.

64. On the rare occasions that consensus is not reached, the Chair may determine that a matter should be voted on. Each member of the Board shall have one vote and decisions shall be reached by a simple majority of members present. Where there is an equality of votes, the person chairing the meeting (whether the Chair, Deputy Chair or Acting Chair) has a second and deciding vote provided they are not conflicted.

## **Reporting**

65. The Minister may require the Board to report on such matters and at such intervals as determined, where those matters are within the remit of the Board.
66. The Board shall make recommendations to the Minister on any area within its remit where it considers action or improvement is needed.

## **Administration**

67. Administrative support shall be provided by a Board Secretary.
68. A schedule of meetings of the Board shall be drawn up for each financial year and circulated to the Board. A copy of the schedule of meetings shall be made available to the Minister and will be published.
69. The agenda for the Board shall be determined collectively by the Board, in addition to any item which the Minister has requested the Board to consider.
70. Members of the Board who wish to put forward an agenda item shall write to the Chair with details of the proposed item and any supporting documents not less than fourteen days before the next scheduled meeting. In the event that the Chair is not willing to include the proposed item on the agenda of a meeting, any member will be entitled to have a notice of motion included on the agenda of the next Board meeting, for the purposes of determining if the proposed item should be substantively discussed at the following Board meeting.
71. The agenda shall be published once approved by the Chair, except for the agenda items the Board will need to consider in private.
72. Minutes shall be taken of Board meetings. The minutes shall be prepared within 10 business days of the meeting and submitted to the person who chaired the meeting for approval. The minutes must formally record who chaired the meeting.
73. Once the person chairing the meeting has approved the minutes and agreed them as a true record of the meeting, they will be circulated to the members and the Minister. Any corrections required to the minutes will be tabled at the next meeting.
74. The minutes, and supporting Board papers, will be published except for those items which the Board has considered in private.
75. Conflicts of interest will be recorded in the minutes. 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. The Chair will



determine if that interest is such that the member must be recused (or the Deputy Chair if the Chair declares an interest). The Board must develop policies and procedures related to the management of conflicts of interest. These must accord with the provisions of these Terms of Reference, must be approved by the Minister, and must be published.

76. Minutes and board papers shall usually be made available to members of the Board and the Minister not less than 7 days in advance of each meeting.

## **Data, information and confidentiality**

77. As a non-statutory Board, the Board will not be separately registered as a “Controller” under the Data Protection (Jersey) Law 2018 but, as the Board of the Department which is a registered “Controller”, the Board and all members of the Board will operate within the requirements of that Law.
78. The Board will similarly operate within the provision of Freedom of Information (Jersey) Law 2011 as a Board of the Department.
79. It is a duty of the Board, and all Board members, to protect confidential information about people (service users and staff) and to ensure that policies, procedures and systems are put in place to ensure that confidential information is only shared with the Board, or by the Board, when it necessary to ensure safe or effective care or protect against harm.

## **General Matters**

80. The Board shall arrange for periodic reviews of its performance and, at least once a year, review these Terms of Reference, including its membership, to ensure it is operating effectively and in a manner which supports staff to do their best work for Islanders.
81. The Board represents a new way of working for the Department. The Minister and Board members must, therefore, be alive to the potential need to flex and refine the Board’s working practice and the terms of reference. In doing so, however, the Board will ensure adherence to best practice in governance.
82. Prior to undertaking its annual review, the Board must, in writing, set out a proposed process for the review, including parties whose views will be sought, for approval by the Minister.
83. Having undertaken any review (whether an annual or an interim review) the Board will provide a report to the Minister on its findings. The Board may recommend to the Minister any changes it considers necessary to improve Board performance or efficiency. In the event the Minister wishes to make any substantive changes to the Board’s Terms of Reference, the Minister must propose those changes to the Assembly. The Board must prepare an annual report setting out its accountabilities and related activities. The Minister will publish this report in full as part of, or alongside, the Annual Report and Accounts of the States of Jersey. The Board is not required to produce annual separate accounts as the Department’s accounts are included in the accounts of the States of Jersey.

84. The Minister must make an annual assessment of the resources required for the Board to operate. With the agreement of the Council of Ministers, the Minister must then ensure those resources are set out in the Government Plan. The Minister must consult the Board before making any such assessment and must set out for the Council of Ministers and the Assembly the Board's response to that consultation.
85. The Board Secretary will be employed by GoJ (and will be subject to the terms and conditions and policies that apply to all government employees) but will work for the Board and shall be treated as if they are an employee of the Board, taking direction from the Chair.

## **Appendix: Appointments, removal and suspension**

### **Appointments**

86. The Minister shall appoint the Chair and other non-executive board members. The Minister shall appoint one of the non-executive directors as Deputy Chair.
87. The Jersey Appointments Commission will oversee the appointment process.
88. The Minister shall not appoint a non-executive Board member unless satisfied that the person meets the specification for the non-executive role.
89. The Minister shall not appoint a non-executive Board member who:
  - a. is a Member of the States Assembly
  - b. is a GoJ employee (or person similarly contracted)
  - c. has a financial interest in, or may derive financial benefit from, the services provided or commissioned by the Department, or
  - d. has a conflict of interest that would call into question their ability to undertake the role.
90. The Minister must also be satisfied that the person can meet and uphold the standards of conduct set out in 'The Seven Principles of Public Life.'
91. The first substantive Chair shall be appointed for a term to be determined by the Minister. The Minister may extend the term of appointment of the Chair in accordance with the policies of the Jersey Appointments Commission, which currently provides for a maximum 9-year term of office.
92. The first non-executive appointments to the Board (excluding the Chair) shall be for a period of between 3 to 5 years. The Minister may extend the term of appointment of a non-executive Board member in accordance with the policies of the Jersey Appointments Commission, which currently provides for a maximum 9-year term of office.
93. The Board will appoint a non-executive director as a Senior Independent Director. The Chair cannot be appointed as Senior Independent Director. The Deputy Chair can be appointed as Senior Independent Director but, in the event the Deputy Chair is called on to act as Chair, they cannot act as Senior Independent Director during this period.
94. The Board shall be provided with appropriate and timely training, both in the form of an induction programme for new Board members and on an ongoing basis for all Board members.

### **Removal or suspension**

95. The Chair and non-executive Board members may only be removed or suspended by the Minister.

96. When removing the Chair or a non-executive Board member, the Minister must have clear and cogent reasons to do so. These would typically be limited to the Chair or non-executive Board member:
- a. becoming disqualified for appointment on the grounds set out above
  - b. failing to discharge their functions without reasonable excuse
  - c. behaving in a way that is not compatible with their continuing on the Board
  - d. has become bankrupt, or
  - e. is otherwise unable or unfit to discharge the functions of a Board member.
97. The Minister shall only suspend the Chair or a non-executive Board member if the Minister believes there may be grounds for removal and needs to investigate the matter.
98. Prior to removing or suspending the Chair, the Minister must consult the Senior Independent Director. Prior to removing or suspending a non-executive Director, the Minister must consult the Chair. The Minister must then put the grounds for removal or suspension to the Chair or non-executive director, providing them with a right to reply. The exception being in cases of gross misconduct where the Minister may remove or suspend with immediate effect.
99. The Minister may nominate an Acting Chair if the Chair is incapacitated, suspended, resigns, or their term of office or contract ends, and no replacement has been appointed, or is unable to perform their duties for any reason. The Minister may appoint another non-executive Board member or someone other than another non-executive Board member as Acting Chair.