

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT – Not for onward circulation

Integrated Care Board

DRAFT Constitution: Draft V 0.5

Notes

This draft is based on the Model Constitution template and has been completed with reference to the supporting notes (which explain more about what is required from the optional/local determination clauses, and provide some example clauses) and good governance practice. Superscript numbers indicate which supporting note refers.

DRAFT 0.5

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

[Insert ICB logo]

NHS North East and North Cumbria Integrated Care Board

CONSTITUTION

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

CONTENTS (Will be updated prior to submission)

1. Introduction	6
1.1 <i>Background/ Foreword</i>	6
1.2 <i>Name</i>	6
1.3 <i>Area Covered by the Integrated Care Board</i>	6
1.4 <i>Statutory Framework</i>	6
1.5 <i>Status of this Constitution</i>	8
1.6 <i>Variation of this Constitution</i>	8
1.7 <i>Related Documents</i>	8
2 Composition of The Board of the ICB	11
2.2 <i>Regular Participants and Observers at Board Meetings²⁰</i>	12
3 Appointments Process for the Board	14
3.1 <i>Eligibility Criteria for Board Membership:</i>	14
3.2 <i>Disqualification Criteria for Board Membership²⁵</i>	14
3.3 <i>Chair²⁶</i>	16
3.4 <i>Chief Executive</i>	16
3.5 <i>Partner Member(s) - NHS trusts and FTs [add which³² NHS Trusts and FTs provide services within the ICB area]</i>	17
3.6 <i>Partner Member(s) - Providers of Primary Medical Services.</i>	18
3.7 <i>Partner Member(s) - local authorities</i>	20
3.8 <i>Medical Director⁴⁵</i>	21
3.9 <i>Director of Nursing⁴⁸</i>	22
3.10 <i>A Director of Finance⁵¹</i>	22
3.11 <i>[Four⁵⁴] Independent Non-Executive Members⁵⁵</i>	23
3.12 <i>Other Board Members⁶¹</i>	24
3.13 <i>Board Members: Removal from Office.</i>	24
3.14 <i>Terms of Appointment of Board Members</i>	26
4 Arrangements for the Exercise of our Functions.	27
4.1 <i>Good Governance</i>	27
4.2 <i>General</i>	27
4.3 <i>Authority to Act</i>	27

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

4.4	<i>Scheme of Reservation and Delegation</i>	28
4.5	<i>Functions and Decision Map</i>	28
4.6	<i>Committees and Sub-Committees⁶⁵</i>	29
4.7	<i>Delegations made under section 65Z5 of the 2006 Act</i>	31
5	Procedures for Making Decisions⁷³	32
5.1	<i>Standing Orders</i>	32
5.2	<i>Standing Financial Instructions (SFIs)</i>	32
6	Arrangements for Conflict of Interest Management and Standards of Business Conduct	33
6.1	<i>Conflicts of Interest⁷⁵</i>	33
6.2	<i>Principles⁸⁰</i>	34
6.3	<i>Declaring and Registering Interests</i>	34
6.4	<i>Standards of Business Conduct</i>	35
7	Arrangements for ensuring Accountability and Transparency	37
7.2	<i>Principles⁸⁴</i>	37
7.3	<i>Meetings and publications</i>	37
7.4	<i>Scrutiny and Decision Making</i>	38
7.5	<i>Annual Report</i>	39
8	Arrangements for Determining the Terms and Conditions of Employees.	39
9	Arrangements for Public Involvement	41
Appendix 1: Definitions of Terms Used in This Constitution		43
Appendix 2: Standing Orders		44
1.	Introduction⁹⁴	44
2.	Amendment and review	44
3.	Interpretation, application and compliance	44
4.	Meetings of the Integrated Care Board	45
4.1.	Calling Board Meetings⁹⁷	45
4.4.	Chair of a meeting	45

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

4.5. Agenda, supporting papers and business to be transacted.....	46
4.6. Petitions.....	46
4.7. Nominated Deputies ¹⁰³	46
4.8. Virtual attendance at meetings ¹⁰⁴	47
4.9. Quorum ¹⁰⁵	47
4.10. Vacancies	48
4.11. Decision making	48
4.12. Minutes	49
4.13. Admission of public and the press	50
5. Suspension of Standing Orders.....	50
6. Use of seal and authorisation of documents.....	51

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

1. Introduction

1.1 Background/ Foreword¹

(in development)

1.2 Name

1.2.1 The name of this Integrated Care Board is NHS North East and North Cumbria Integrated Care Board (“the ICB”).

1.3 Area Covered by the Integrated Care Board

1.3.1 The area covered by the ICB³ is coterminous with the Local Authorities listed at 3.7.1, with the North Cumbria geographical area covering Allerdale, Carlisle, Copeland and Eden. *(description to be finalised to ensure alignment with the Establishment Order – central guidance being prepared on descriptors.)*⁴.

1.4 Statutory Framework

1.4.1 The ICB is established by order made by NHS England under powers in the 2006 Act.

1.4.2 The ICB is a statutory body with the general function of arranging for the provision of services for the purposes of the health service in England and is an NHS body for the purposes of the 2006 Act.

1.4.3 The main powers and duties of the ICB to commission certain health services are set out in sections 3 and 3A of the 2006 Act. These provisions are supplemented by other statutory powers and duties that apply to ICBs, as well as by regulations and directions (including, but not limited to, those made under the 2006 Act).⁵

1.4.4 In accordance with section 14Z25(5) of, and paragraph 1 of Schedule 1B to, the 2006 Act the ICB must have a constitution, which must comply with the requirements set out in that Schedule. The ICB is required to publish its constitution (section 14Z29). This constitution is published at *[Add web address when website developed]*

1.4.5 The ICB must act in a way that is consistent with its statutory functions, both powers and duties. Many of these statutory functions are set out in the 2006 Act but there are also other specific pieces of legislation that apply to ICBs.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

Examples include, but are not limited to, the Equality Act 2010 and the Children Acts. Some of the statutory functions that apply to ICBs take the form of general statutory duties, which the ICB must comply with when exercising its functions. These duties include but are not limited to:

- a) Having regard to and acting in a way that promotes the NHS Constitution (section 2 of the Health Act 1989 and section 14Z32 of the 2006 Act);
- b) Exercising its functions effectively, efficiently and economically (section 14Z33 of the 2006 Act);
- c) Duties in relation children including safeguarding, promoting welfare etc (including the Children Acts 1989 and 2004, and the Children and Families Act 2014)
- d) Adult safeguarding and carers (the Care Act 2014)
- e) Equality, including the public-sector equality duty (under the Equality Act 2010) and the duty as to health inequalities (section 14Z35); and
- f) Information law, (for instance, data protection laws, such as the EU General Data Protection Regulation 2016/679 and Data Protection Act 2018, and the Freedom of Information Act 2000).
- g) Provisions of the Civil Contingencies Act 2004

1.4.6 The ICB is subject to an annual assessment of its performance by NHS England which is also required to publish a report containing a summary of the results of its assessment.

1.4.7 The performance assessment will assess how well the ICB has discharged its functions during that year and will, in particular, include an assessment of how well it has discharged its duties under:

- a) section 14Z34 (improvement in quality of services),
- b) section 14Z35 (reducing inequalities),
- c) section 14Z38 (obtaining appropriate advice),
- d) section 14Z43 (duty to have regard to effect of decisions)
- e) section 14Z44 (public involvement and consultation),
- f) sections 223GB to 223N (financial duties), and
- g) section 116B(1) of the Local Government and Public Involvement in Health Act 2007 (duty to have regard to assessments and strategies).

1.4.8 NHS England has powers to obtain information from the ICB (section 14Z58 of the 2006 Act) and to intervene where it is satisfied that the ICB is failing, or has failed, to discharge any of its functions or that there is a significant risk that it will fail to do so (section 14Z59).

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

1.5 Status of this Constitution

- 1.5.1 The ICB was established on 1 April 2022 by *[name and reference of establishment order]*, which made provision for its constitution by reference to this document.
- 1.5.2 Changes to this constitution will not be implemented until, and are only effective from, the date of approval by NHS England.

1.6 Variation of this Constitution

- 1.6.1 In accordance with paragraph 14 of Schedule 1B to the 2006 Act this constitution may be varied in accordance with the procedure set out in this paragraph. The constitution can only be varied in two circumstances:
- a) where the ICB applies to NHS England in accordance with NHS England's published procedure⁶ and that application is approved; and
 - b) where NHS England varies the constitution on its own initiative, (other than on application by the ICB).
- 1.6.2 The procedure for proposal and agreement of variations to the constitution is as follows:⁷
- a) The Chair and/or Chief Executive may periodically propose amendments to the constitution, which shall be submitted to the Board for approval. Agreed proposed changes will then be submitted to NHS England for approval.
 - b) Proposed amendments to this constitution will not be implemented until an application to NHS England for variation has been approved.

1.7 Related Documents

- 1.7.1 This Constitution is also supported by a number of documents which provide further details on how governance arrangements in the ICB will operate.
- 1.7.2 The following are appended to the constitution and form part of it for the purpose of clause 1.6 and the ICB's legal duty to have a constitution:
- a) **Standing orders**– which set out the arrangements and procedures to be used for meetings and the selection and appointment processes for the ICB committees.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

1.7.3 The following do not form part of the constitution but are required to be published.

- a) **The Scheme of Reservation and Delegation (SoRD)⁸**– sets out those decisions that are reserved to the Board of the ICB and those decisions that have been delegated in accordance with the powers of the ICB and which must be agreed in accordance with and be consistent with the constitution. The SoRD identifies where / who functions and decisions have been delegated to.
- b) **Functions and Decision map⁹**- a high level structural chart that sets out which key decisions are delegated and taken by which part or parts of the system. The Functions and Decision map also includes decision making responsibilities that are delegated to the ICB (for example, from NHS England).
- c) **Standing Financial Instructions** – which set out the arrangements for managing the ICB’s financial affairs.
- d) **The ICS Governance Handbook¹⁰**– which includes:
 - Terms of reference for all committees and sub-committees of the Board that exercise ICB functions¹¹.
 - Delegation arrangements¹² for all instances where ICB functions are delegated, in accordance with section 65Z5 of the 2006 Act, to another ICB, NHS England, an NHS trust, NHS foundation trust, local authority, combined authority or any other prescribed body; or to a joint committee of the ICB and one or those organisations in accordance with section 65Z6 of the 2006 Act.
 - Terms of reference of any joint committee of the ICB and another ICB, NHS England, an NHS trust, NHS foundation trust, local authority, combined authority or any other prescribed body; or to a joint committee of the ICB and one or those organisations in accordance with section 65Z6 of the 2006 Act.
 - Committee structure
 - Functions and Decision Map
 - Scheme of Reservation and Delegation
 - Standing Financial Instructions
 - Committee Structure
 - Remuneration Guidance

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

- e) **Key policy documents**¹³ - including:
- Standards of Business Conduct and Declarations of Interest Policy
 - Policy for public involvement and engagement

DRAFT 0.5

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

2 Composition of The Board of the ICB

2.1.1 This part of the constitution describes the membership of the Integrated Care Board. Further information about the criteria for the roles and how they are appointed is in section 3.

2.1.2 Further information about the individuals who fulfil these roles can be found on our website [add link].¹⁴

2.1.3 In accordance with paragraph 3 of Schedule 1B to the 2006 Act, the membership of the ICB (referred to in this constitution as “the Board” and members of the ICB are referred to as “Board Members”) consists of:

- a) a Chair
- b) a Chief Executive
- c) at least three Ordinary members.

2.1.4 The Ordinary¹⁵ Members include at least three members who will bring knowledge and a perspective from their sectors. These members (known as Partner Members) are identified and appointed in accordance with the procedures set out in Section 3 below:

- NHS trusts and foundation trusts who provide services within the ICB’s area and are of a prescribed description
- the primary medical services (general practice) providers within the area of the ICB and are of a prescribed description
- the local authorities whose area coincides with or includes the whole or any part of the ICB’s area.

While the Partner Members will bring knowledge and experience from their sector and will contribute the perspective of their sector to the decisions of the board, they are not to act as delegates of those sectors.

2.1.5 The ICB has eight¹⁶ Partner Members.

2.1.6 As per NHS England Policy¹⁷, the ICB has appointed the following **additional** Ordinary Members:

- a) three executive members, namely:
 - Director of Finance
 - Medical Director
 - Director of Nursing
- b) Two independent non-executive members

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

2.1.7 The ICB has also appointed the following further Ordinary Members: to the Board¹⁹ (to list here all locally agreed additional Ordinary members – executive or non-executive)

- a) In addition to the statutory minimum of two Non Executive Members, a further two are added in order to take account of the geographical size and complexity of the ICS area and the need for independent leadership of key committees.

- b) In addition to the statutory minimum executive roles (Medical Director, Nursing Director, Finance Director), a further seven member director roles will be created. The precise portfolios of these additional roles will be at the discretion of the Chair and Chief Executive. These will be:
 - One Chief Operating Officer
 - One Director of Digital and Data
 - One Director of Improvement and Transformation
 - One Director of People
 - Three Executive Directors of Commissioning

Other board-level Director roles of the ICB (attending as participants rather than voting members) will be at the discretion of the Chair and Chief Executive.

- c) In addition to the three statutory minimum Partner members of the Board (drawn from Foundation Trusts, local authorities and primary medical service providers), a further five Partner members are added. This is in order to take account of the geographical size and complexity of the ICS area.

- d) These additional partner member seats on the Board are as follows: three from local authorities (as described in 2.1.4 above), one from Foundation Trusts, one from primary medical services providers.

2.2 Regular Participants and Observers at Board Meetings²⁰

2.2.1 The Board may invite specified individuals to be Participants or Observers at some of its meetings (or parts of its meetings) in order to inform its decision-making and the discharge of its functions as it sees fit. Participants²¹ will receive advanced copies of the notice, agenda and papers for Board meetings. They may be invited to attend any or all of the Board meetings, or part(s) of a meeting by the Chair. Any such person may be invited, at the discretion of the Chair to ask questions and address the meeting but may not vote.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

2.2.2 Participants will include:

- a) ICB Directors with specific portfolio areas
- b) Representative from North East and North Cumbria ICS Healthwatch Network
- c) Representative from the North East and North Cumbria Voluntary, Community and Social Enterprise Partnership ²²
- d) Any other person identified by the Chair

2.2.3 Observers²³ will receive advanced copies of the notice, agenda and papers for Board meetings. They may be invited to attend any or all of the Board meetings, or part(s) of a meeting by the Chair. Any such person may not address the meeting and may not vote.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

3 Appointments Process for the Board

3.1 Eligibility Criteria for Board Membership:

3.1.1 Each member of the ICB must:

- a) Comply with the criteria of the “fit and proper person test”²⁴
- b) Be willing to uphold the Seven Principles of Public Life (known as the Nolan Principles)
- c) Fulfil the requirements relating to relevant experience, knowledge, skills and attributes set out in a role specification.

3.2 Disqualification Criteria for Board Membership²⁵

3.2.1 A Member of Parliament, or member of the London Assembly.

3.2.2 A member of a local authority in England and Wales or of an equivalent body in Scotland or Northern Ireland.

3.2.3 A person who, within the period of five years immediately preceding the date of the proposed appointment, has been convicted—

- a) in the United Kingdom of any offence, or
- b) outside the United Kingdom of an offence which, if committed in any part of the United Kingdom, would constitute a criminal offence in that part, and, in either case, the final outcome of the proceedings was a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine.

3.2.4 A person who is subject to a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986, sections 56A to 56K of the Bankruptcy (Scotland) Act 1985 or Schedule 2A to the Insolvency (Northern Ireland) Order 1989 (which relate to bankruptcy restrictions orders and undertakings).

3.2.5 A person who, has been dismissed within the period of five years immediately preceding the date of the proposed appointment, otherwise than because of redundancy, from paid employment by any Health Service Body.

3.2.6 A person whose term of appointment as the chair, a member, a director or a governor of a health service body, has been terminated on the grounds:

- a) that it was not in the interests of, or conducive to the good management of, the health service body or of the health service that the person should continue to hold that office

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

- b) that the person failed, without reasonable cause, to attend any meeting of that health service body for three successive meetings,
 - c) that the person failed to declare a pecuniary interest or withdraw from consideration of any matter in respect of which that person had a pecuniary interest, or
 - d) of misbehaviour, misconduct or failure to carry out the person's duties;
- 3.2.7 A health care professional (within the meaning of section 14N of the 2006 Act) or other professional person who has at any time been subject to an investigation or proceedings, by any body which regulates or licenses the profession concerned ("the regulatory body"), in connection with the person's fitness to practise or any alleged fraud, the final outcome of which was—
- a) the person's suspension from a register held by the regulatory body, where that suspension has not been terminated
 - b) the person's erasure from such a register, where the person has not been restored to the register
 - c) a decision by the regulatory body which had the effect of preventing the person from practising the profession in question, where that decision has not been superseded, or
 - d) a decision by the regulatory body which had the effect of imposing conditions on the person's practice of the profession in question, where those conditions have not been lifted.
- 3.2.8 A person who is subject to—
- a) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002, or
 - b) an order made under section 429(2) of the Insolvency Act 1986 (disabilities on revocation of administration order against an individual).
- 3.2.9 A person who has at any time been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners for England and Wales, the Charity Commission, the Charity Commission for Northern Ireland or the High Court, on the grounds of misconduct or mismanagement in the administration of the charity for which the person was responsible, to which the person was privy, or which the person by their conduct contributed to or facilitated.
- 3.2.10 A person who has at any time been removed, or is suspended, from the management or control of any body under—

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

- a) section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(f) (powers of the Court of Session to deal with the management of charities), or
- b) section 34(5) or of the Charities and Trustee Investment (Scotland) Act 2005 (powers of the Court of Session to deal with the management of charities).

3.3 Chair²⁶

3.3.1 The ICB Chair²⁷ is to be appointed by NHS England, with the approval of the Secretary of State.

3.3.2 In addition to criteria specified at 3.1, this member must fulfil the following additional eligibility criteria

- a) The Chair will be independent.
- b) Any other criteria as may be set out in any NHS England guidance

3.3.3 In addition to criteria specified in 3.2, individuals will not be eligible if:

- a) They hold a role in another health and care organisation within the ICB area.
- b) Any of the disqualification criteria set out in 3.2 apply

3.3.4 The term of office for the Chair will be four years and the total number of terms a Chair may serve is two.²⁸

3.4 Chief Executive

3.4.1 The Chief Executive will be appointed by the Chair of the ICB in accordance with any guidance issued by NHS England.²⁹

3.4.2 The appointment will be subject to approval of NHS England in accordance with any procedure published by NHS England³⁰

3.4.3 The Chief executive must fulfil the following additional eligibility criteria

- a) Be an employee of the ICB or a person seconded to the ICB who is employed in the civil service of the State or by a body referred to in paragraph 18(4)(b) of Schedule 1B to the 2006 Act
- b) Meets the Person Specification for the role
- c) No further local criteria proposed³¹
- d) Any other criteria as may be set out in any NHS England guidance

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

3.4.4 Individuals will not be eligible if

- a) Any of the disqualification criteria set out in 3.2 apply
- b) Subject to clause 3.4.3(a), they hold any other employment or executive role.

3.5 Partner Member(s) – eligible NHS Trusts and Foundation Trusts (providing services within the ICB area)

- a. County Durham and Darlington NHS Foundation Trust
- b. Cumbria, Northumberland and Tyne & Wear NHS Foundation Trust
- c. Gateshead Health NHS Foundation Trust
- d. Newcastle upon Tyne Hospitals NHS Foundation Trust
- e. North Cumbria Integrated Care NHS Foundation Trust
- f. North East Ambulance Service NHS Foundation Trust
- g. North Tees and Hartlepool NHS Foundation Trust
- h. North West Ambulance Service
- i. Northumbria Healthcare NHS Foundation Trust
- j. South Tees Hospitals NHS Foundation Trust
- k. South Tyneside and Sunderland NHS Foundation Trust
- l. Tees, Esk and Wear Valleys NHS Foundation Trust

3.5.1 This Partner Member description to be inserted in accordance with the regulations³³: **(Regulations are awaited)**

3.5.2 This member must fulfil the eligibility criteria set out at 3.1 and also the following additional eligibility criteria

- a) Be the Chief Executive or an Executive Director of one of the NHS Trusts or Foundation Trusts within the ICB's area³⁴
- b) Fulfil any other criteria as may be set out in NHS England guidance
- c) Declare themselves willing to serve as a full member of a unitary board, *inter alia* responsible for stewardship of NHS funds and be bound by individual and collective accountability for decisions even where these may be unpopular or attract criticism.
- d) Agree that they will bring knowledge and perspective from their sector but not be delegates or carry agreed mandates from any part of that sector.

3.5.3 Individuals will not be eligible if

- a) Any of the disqualification criteria set out in 3.2 apply

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

- b) Any other exclusion criteria set out in NHS England guidance applies.
- c) They cannot provide unequivocal assurances in relation to the criteria in 3.5.2 c) or d).

3.5.4 This member will be appointed by³⁵ the ICB Chair, supported by an Appointments Panel. Recruitment and selection processes will be designed to take account of equality, diversity and inclusion at each stage of the process. The appointment process will include both nomination and selection elements³⁶:

3.5.4.1 Partner members will be nominated jointly by their respective sector in line with the requirements of the Act and related Guidance.

3.5.4.2 Nominated individuals who meet the criteria outlined at 3.1 and 3.5.3 will complete an application process against a published role specification.

3.5.4.3 An Appointments Panel will be established and chaired by the ICB Chair to assess the applications and interview suitable applicants. Recruitment and selection processes will be designed to take account of equality, diversity and inclusion at each stage of the process.

3.5.4.4 Appointments will be approved by the ICB Chair

3.5.5 The term of office³⁷ for this Partner Member will be four years. Their service will be limited to two terms but at the end of each term of office, the sector will be asked if there are alternative nominations for this role. Should there be more eligible nominations than positions available, then the appointments process will be followed. If no additional nominations are received and the incumbent postholder remains eligible, then they will be considered for reappointment to the role.

3.5.6 On first appointment to the role, the ICB may stagger the end date of the length of the term of office to avoid all terms of office expiring at the same time.

3.6 Partner Member(s) - Providers of Primary Medical Services.

3.6.1 This Partner Member is [*description to be inserted in accordance with the regulations - awaited*].

3.6.2 This member must fulfil the eligibility criteria set out at 3.1 and also the following additional eligibility criteria

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

- a) Be a provider of primary medical services within the ICB's area³⁴
- b) Fulfil any other criteria as may be set out in NHS England guidance
- c) Declare themselves willing to serve as a full member of a unitary board, *inter alia* responsible for stewardship of NHS funds and be bound by individual and collective accountability for decisions even where these may be unpopular or attract criticism.
- d) Agree that they will bring knowledge and perspective from their sector but not be delegates or carry agreed mandates from any part of that sector.

3.6.3 Individuals will not be eligible if:

- a) Any of the disqualification criteria set out in 3.2 apply
- b) Any other exclusion criteria set out in NHSE guidance apply
- c) They cannot provide unequivocal assurances in relation to the criteria in 3.6.2 c) or d).

3.6.4 This member will be appointed by³⁹ the ICB Chair, supported by an Appointments Panel.

3.6.5 The appointment process will be as follows⁴⁰:

- a) Partner members will be nominated jointly by their respective sector in line with the requirements of the Act and related Guidance.
- b) Nominated individuals who meet the criteria outlined at 3.1 and 3.5.3 will complete an application process against a published role specification.
- c) An Appointments Panel will be established and chaired by the ICB Chair to assess the applications and interview suitable applicants. Recruitment and selection processes will be designed to take account of equality, diversity and inclusion at each stage of the process.
- d) Appointments will be approved by the ICB Chair

3.6.6 The term of office³⁷ for this Partner Member will be four years. Their service will be limited to two terms but at the end of each term of office, the sector will be asked if there are alternative nominations for this role. Should there be more eligible nominations than positions available, then the appointments process will be followed. If no additional nominations are received and the incumbent postholder remains eligible, then they will be considered for reappointment to the role.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

- 3.6.7 On first appointment to the role, the ICB may stagger the end date of the length of the term of office to avoid all terms of office expiring at the same time.

3.7 Partner Member(s) – eligible local authorities

3.7.1 This Partner Member [*description to be inserted in accordance with the regulations*] from the local authorities whose areas coincide with, or include the whole or any part of, the ICB's area. Those local authorities are:

- a) Cumbria County Council
- b) Darlington Borough Council
- c) Durham County Council
- d) Gateshead Council
- e) Hartlepool Borough Council
- f) Middlesbrough Council
- g) Newcastle upon Tyne City Council
- h) North Tyneside Council
- i) Northumberland County Council
- j) Redcar & Cleveland Borough Council
- k) Stockton-on-Tees Borough Council
- l) South Tyneside Council
- m) Sunderland City Council

This member will fulfil the eligibility criteria set out at 3.1 and also the following additional eligibility criteria

- a) Be the Chief Executive or relevant Executive level role of one of the bodies listed at 3.7.1
- b) Fulfil any other criteria as may be set out in NHS England guidance
- c) Declare themselves willing to serve as a full member of a unitary board, *inter alia* responsible for stewardship of NHS funds and be bound by individual and collective accountability for decisions even where these may be unpopular or attract criticism.
- d) Agree that they will bring knowledge and perspective from their sectors but not be delegates or carry agreed mandates from any part of that sector.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

3.7.2 Individuals will not be eligible if

- a) Any of the disqualification criteria set out in 3.2 apply
- b) Any other exclusion criteria set out in NHSE guidance applies
- c) They cannot provide unequivocal assurances in relation to the criteria in 3.7.2 c) or d).

3.7.3 This member will be appointed by⁴² the ICB Chair, supported by an Appointments Panel.

3.7.4 The appointment process will be as follows⁴³:

- a) Partner members will be nominated jointly by their respective sector in line with the requirements of the Act and related Guidance.
- b) Nominated individuals who meet the criteria outlined at 3.1 and 3.5.3 will complete an application process against a published role specification.
- c) An Appointments Panel will be established and chaired by the ICB Chair to assess the applications and interview suitable applicants. Recruitment and selection processes will be designed to take account of equality, diversity and inclusion at each stage of the process.
- d) Appointments will be approved by the ICB Chair

3.7.5 The term of office³⁷ for this Partner Member will be four years. Their service will be limited to two terms but at the end of each term of office, the sector will be asked if there are alternative nominations for this role. Should there be more eligible nominations than positions available, then the appointments process will be followed. If no additional nominations are received and the incumbent postholder remains eligible, then they will be considered for reappointment to the role.

3.7.6 On first appointment to the role, the ICB may stagger the end date of the length of the term of office to avoid all terms of office expiring at the same time.

3.8 Medical Director⁴⁵

3.8.1 This member will fulfil the eligibility criteria set out at 3.1 and also the following additional eligibility criteria

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

- a) Be an employee of the ICB⁴⁶ or a person seconded to the ICB who is employed in the civil service of the State or by a body referred to in paragraph 18(4)(b) of Schedule 1B to the 2006 Act
- b) Be a registered Medical Practitioner

3.8.2 Individuals will not be eligible if:

- a) Any of the disqualification criteria set out in 3.2 apply
- b) Any other exclusion criteria set out in NHS England guidance applies.

3.8.3 This member will be appointed by⁴⁷ the Chief Executive supported by an Appointments Panel headed by the Chair or Non-Executive Member of the board and the recommended appointment will be subject to the approval of the Chair. Recruitment and selection processes will be designed to take account of equality, diversity and inclusion at each stage of the process.

3.9 Director of Nursing⁴⁸

3.9.1 This member will fulfil the eligibility criteria set out at 3.1 and also the following additional eligibility criteria

- a) Be an employee⁴⁹ of the ICB or a person seconded to the ICB who is employed in the civil service of the State or by a body referred to in paragraph 18(4)(b) of Schedule 1B to the 2006 Act
- b) Be a registered Nurse or Midwife
- c) Any other criteria set out by NHS England's guidance.

3.9.2 Individuals will not be eligible if:

- a) Any of the disqualification criteria set out in 3.2 apply
- b) Any other exclusion criteria set out in NHS England guidance applies.

3.9.3 This member will be appointed by⁴⁷ the Chief Executive supported by an Appointments Panel headed by the Chair or Non-Executive Member of the board and the recommended appointment will be subject to the approval of the Chair. Recruitment and selection processes will be designed to take account of equality, diversity and inclusion at each stage of the process.

3.10 Director of Finance⁵¹

3.10.1 This member will fulfil the eligibility criteria set out at 3.1 and also the following additional eligibility criteria

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

- a) Be an employee of the ICB⁵² or a person seconded to the ICB who is employed in the civil service of the State or by a body referred to in paragraph 18(4)(b) of Schedule 1B to the 2006 Act
- b) Full membership of a recognised professional Chartered Accountancy Body.
- c) Any other criteria set out by NHS England's guidance

3.10.2 Individuals will not be eligible if:

- a) Any of the disqualification criteria set out in 3.2 apply
- b) Any other exclusion criteria set out in NHS England guidance applies.

3.10.3 This member will be appointed by⁴⁷ the Chief Executive supported by an Appointments Panel headed by the Chair or Non-Executive Member of the board and the recommended appointment will be subject to the approval of the Chair. Recruitment and selection processes will be designed to take account of equality, diversity and inclusion at each stage of the process.

3.11 Four⁵⁴ Independent Non-Executive Members⁵⁵

3.11.1 The ICB will appoint four independent Non-Executive Members

3.11.2 These members will be appointed by⁵⁶ the ICB chair, supported by an Appointments Panel.

- a) The appointments will be made following an openly advertised application. A panel will be established and chaired by the ICB Chair to assess the applications and interview suitable applicants. Recruitment and selection processes will be designed to take account of equality, diversity and inclusion at each stage of the process.

3.11.3 These members will fulfil the eligibility criteria set out at 3.1 and also the following additional eligibility criteria

- a) Not be employee of the ICB or a person seconded to the ICB
- b) Not hold a role in another health and care organisation in the ICB area
- c) One shall have specific knowledge, skills and experience that makes them suitable for appointment to the Chair of the Audit Committee
- d) Another should have specific knowledge, skills and experience that makes them suitable for appointment to the Chair of the Remuneration Committee
- e) Will be living in, or have a connection to, the area covered by the ICB (as described at 1.3.1)
- f) Any other criteria set out by NHS England.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

3.11.4 Individuals will not be eligible if

- a) Any of the disqualification criteria set out in 3.2 apply
- b) They hold a role in another health and care organisation within the ICB area
- c) any additional criteria set out in NHS England guidance applies
- d) any additional criteria proposed by the ICB applies.

3.11.5 The term of office for an independent non-executive member will be up to three years and the total number of terms an individual may serve is three⁵⁸ terms after which they will no longer be eligible for re-appointment.

3.11.6 Initial appointments may be for a shorter period⁵⁹ in order to avoid all non-executive members leaving office at once.

3.11.7 Subject to⁶⁰ satisfactory appraisal and the support of the Chief Executive, the Chair may approve the re-appointment of an independent non-executive member up to the maximum number of terms permitted for their role.

3.12 Other Board Members⁶¹

3.12.1 Additional Executive Board Members (listed at 2.1.7(b)) will be appointed by⁴⁷ the Chief Executive supported by an Appointments Panel headed by the Chair or Non-Executive Member of the board and the recommended appointment will be subject to the approval of the Chair. Recruitment and selection processes will be designed to take account of equality, diversity and inclusion at each stage of the process.

3.13 Board Members: Removal from Office.

3.13.1 Arrangements for the removal from office of Executive members of the Board is subject to the term of appointment, and application of the relevant ICB policies and procedures.

3.13.2 With the exception of the Chair, Board members shall be removed from office if any of the following occurs:

3.13.3 :

- a) If they no longer fulfil the requirements of their role or become ineligible for their role as set out in this constitution, regulations or guidance

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

- b) Fail to attend 50% of the ICB meetings (unless there are extenuating circumstances);
- c) If they are deemed to not meet the expected standards of performance at their annual appraisal
- d) If they have behaved in a manner or exhibited conduct which has or is likely to be detrimental to the honour and interest of the ICB and is likely to bring the ICB into disrepute. This includes but is not limited to dishonesty; misrepresentation (either knowingly or fraudulently); defamation of any member of the ICB (being slander or libel); abuse of position; non-declaration of a known conflict of interest; seeking to manipulate a decision of the ICB in a manner that would ultimately be in favour of that member whether financially or otherwise: gross misconduct.
- e) Are deemed to have failed to uphold the Nolan Principles of Public Life
- f) Persistently fail to conform to the principles of a unitary board.
- g) Are subject to disciplinary proceedings by a regulator or professional body that has resulted in a decision by the Regulatory Body which had the effect of preventing the person from practising the profession in question, where that decision has not been superseded, or had the effect of imposing conditions on the person's practice, where those conditions have not been lifted.
- h) Vote of no confidence, on the basis of any of the above grounds, by a simple majority of votes of the ICB.

3.13.4 Members may be suspended pending the outcome of an investigation into whether any of the matters in 3.13.3 apply.

3.13.5 Executive Directors (including the Chief Executive) will cease to be Board members if their employment in their specified role ceases, regardless of the reason for termination of the employment.

3.13.6 The Chair of the ICB may be removed by NHS England, subject to the approval of the Secretary of State.

3.13.7 If NHS England is satisfied that the ICB is failing or has failed to discharge any of its functions or that there is a significant risk that the ICB will fail to do so, it may:

3.13.7.1 terminate the appointment of the ICB's chief executive; and

3.13.7.2 direct the chair of the ICB as to which individual to appoint as a replacement and on what terms.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

3.14 Terms of Appointment of Board Members

- 3.14.1 With the exception of the Chair, Non-executive members and Chief executive, arrangements for remuneration⁶³ and any allowances will be agreed by the Remuneration Committee in line with the ICB remuneration policy and any other relevant policies published in the Governance Handbook on the ICB's website and any guidance issued by NHS England or other relevant body. Remuneration for Chairs, Non Executives and chief executives will be set by NHS England [*clarification on final sentence awaited from NHSE*].
- 3.14.2 Other terms of appointment will be determined by the Remuneration Committee.
- 3.14.3 Terms of appointment of the Chair will be determined by NHS England.

3.15 Review of Board Size and Composition

- 3.15.1 In view of the necessity to create additional board membership to address the size and complexity of the ICS jurisdiction, an annual review of the board size and composition will be carried out to ensure that it is fit for purpose in meeting good governance standards. Any necessary changes will be proposed thereafter.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

4 Arrangements for the Exercise of our Functions.

4.1 Good Governance

4.1.1 The ICB will, at all times, observe generally accepted principles of good governance. This includes the Nolan Principles of Public Life and any governance guidance issued by NHS England.

4.1.2 The ICB's Standards of Business Conduct and Declarations of Interest Policy sets out the expected behaviours that members of the board and its committees will uphold and guide decision making whilst undertaking ICB business. It also includes a set of principles that will guide decision making in the ICB. This Policy is published in the Governance Handbook and is available on the Website [insert weblink]

4.2 General

4.2.1 The ICB will:

- a. comply with all relevant laws including but not limited to the 2006 Act and the duties prescribed within it and any relevant regulations;
- b. comply with directions issued by the Secretary of State for Health and Social Care
- c. comply with directions issued by NHS England;
- d. have regard to statutory guidance including that issued by NHS England; and
- e. take account, as appropriate, of other documents, advice and guidance issued by relevant authorities, including that issued by NHS England.
- f. respond to reports and recommendations made by local Healthwatch organisations within the ICB area

4.2.2 The ICB will develop and implement the necessary systems and processes to comply with (a)-(e) above, documenting them as necessary in this constitution, its governance handbook and other relevant policies and procedures as appropriate.

4.3 Authority to Act

4.3.1 The ICB is accountable for exercising its statutory functions and may grant authority to act on its behalf to:

- a. any of its members or employees
- b. a committee or sub-committee of the ICB

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

- 4.3.2 Under section 65Z5 of the 2006 Act, the ICB may arrange with another ICB, an NHS trust, NHS foundation trust, NHS England, a local authority, combined authority or any other body prescribed in Regulations, for the ICB's functions to be exercised by or jointly with that other body or for the functions of that other body to be exercised by or jointly with the ICB. Where the ICB and other body enters such arrangements, they may also arrange for the functions in question to be exercised by a joint committee of theirs and/or for the establishment of a pooled fund to fund those functions (section 65Z6). In addition, under section 75 of the 2006 Act, the ICB may enter partnership arrangements with a local authority under which the local authority exercises specified ICB functions or the ICB exercises specified local authority functions, or the ICB and local authority establish a pooled fund.
- 4.3.3 Where arrangements are made under section 65Z5 or section 75 of the 2006 Act the board must authorise the arrangement, which must be described as appropriate in the SoRD.

4.4 Scheme of Reservation and Delegation

- 4.4.1 The ICB has agreed a scheme of reservation and delegation (SoRD) which is published in full as part of the Governance Handbook [insert weblink]
- 4.4.2 Only the Board may agree the SoRD and amendments to the SoRD may only be approved by the Board
- 4.4.3 The SoRD sets out:
- a. those functions that are reserved to the board;
 - b. those functions that have been delegated to an individual or to committees and sub committees;
 - c. those functions delegated to another body or to be exercised jointly with another body, under section 65Z5 and 65Z6 of the 2006 Act
- 4.4.4 The ICB remains accountable for all of its functions, including those that it has delegated. All those with delegated authority are accountable to the Board for the exercise of their delegated functions.

4.5 Functions and Decision Map

- 4.5.1 The ICB has prepared a Functions and Decision Map which sets out at a high level its key functions and how it exercises them in accordance with the SoRD.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

4.5.2 The Functions and Decision Map is published in the Governance Handbook [add web address]

4.5.3 The map includes:

- a. Key functions reserved to the Board of the ICB
- b. Commissioning functions delegated to committees and individuals.
- c. Commissioning functions delegated under section 65Z5 and 65Z6 of the 2006 Act to be exercised by, or with, another ICB, an NHS trust, NHS foundation trust, local authority, combined authority or any other prescribed body;
- d. functions delegated to the ICB (for example, from NHS England).

4.6 Committees and Sub-Committees⁶⁵

4.6.1 The ICB may appoint committees and arrange for its functions to be exercised by such committees. Each committee may appoint sub-committees and arrange for the functions exercisable by the committee to be exercised by those sub-committees.

4.6.2 All committees and sub-committees are listed in the Scheme of Reservoir and Delegation.

4.6.3 Each committee and sub-committee established by the ICB operates under terms of reference and membership agreed by the Board⁶⁶. All terms of reference are published in the Governance Handbook. For the avoidance of doubt, Committees may not establish sub-committees without Board approval.

4.6.4 The Board remains accountable for all functions, including those that it has delegated to committees and sub-committees and therefore, appropriate reporting and assurance arrangements are in place and documented in terms of reference. All committees and sub-committees that fulfil delegated functions of the ICB, will be required to:

- a. submit to the ICB Board a decision and assurance report following each Committee meeting, summarising key decisions. In the case of sub-committees, these will be submitted to their Parent Committee;

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

- b. submit their confirmed Minutes to the ICB Board for assurance. In the case of sub-committees, these will be submitted to their Parent Committee
- c. comply with agreed internal audit findings and committee effectiveness reviews.
- d. demonstrably consider the equality and diversity implications of decisions they make and consider whether any new resource allocation achieves positive change around inclusion, equality and diversity
- e. members will abide by the 'Principles of Public Life' (The Nolan Principles) and the NHS Code of Conduct.

4.6.5 Any committee or sub-committee established in accordance with clause 4.6 may consist of, or include, persons who are not ICB Members or employees.

4.6.6 All members of committees and sub-committees are required to act in accordance with this constitution, including the standing orders as well at the SFIs and any other relevant ICB policy.

4.6.7 The following committees will be maintained:

- a. **Audit Committee⁶⁸**: This committee is accountable to the Board and provides an independent and objective view of the ICB's compliance with its statutory responsibilities. The committee is responsible for arranging appropriate internal and external audit.

The Audit Committee will be chaired by an independent non-executive member (other than the Chair of the ICB) who has the qualifications, expertise or experience to enable them to express credible opinions on finance and audit matters.

- b. **Remuneration Committee⁶⁹**: This committee is accountable to the Board for matters relating to remuneration, fees and other allowances (including pension schemes) for employees and other individuals who provide services to the ICB.

The Remuneration Committee will be chaired by an independent non-executive member other than the Chair or the Chair of Audit Committee.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

- 4.6.8 The terms of reference for each of the above committees are published in the Governance Handbook⁷⁰.
- 4.6.9 The Board has also established a number of other committees to assist it with the discharge of its functions. These committees are set out in the SoRD and further information about these committees, including terms of reference, are published⁷¹ in the Governance Handbook.

4.7 Delegations made under section 65Z5 of the 2006 Act

- 4.7.1 As per 4.3.2 The ICB may arrange for any functions exercisable by it to be exercised by or jointly with any one or more other relevant bodies (another ICB, NHS England, an NHS trust, NHS foundation trust, local authority, combined authority or any other prescribed body).
- 4.7.2 All delegations made under these arrangements are set out in the ICB Scheme of Reservation and Delegation and included in the Functions and Decision Map.
- 4.7.3 Each delegation made under section 65Z5 of the Act will be set out in a delegation arrangement which sets out the terms of the delegation⁷². This may, for joint arrangements, include establishing and maintaining a pooled fund. The power to approve delegation arrangements made under this provision will be reserved to the Board.
- 4.7.4 The Board remains accountable for all the ICB's functions, including those that it has delegated and therefore, appropriate reporting and assurance mechanisms are in place as part of agreeing terms of a delegation and these are detailed in the delegation arrangements, summaries of which will be published in the Governance Handbook.
- 4.7.5 In addition to any formal joint working mechanisms, the ICB may enter into strategic or other transformation discussions with its partner organisations on an informal basis.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

5 Procedures for Making Decisions⁷³

5.1 Standing Orders

5.1.1 The ICB has agreed a set of standing orders which describe the processes that are employed to undertake its business. They include procedures for:

- conducting the business of the ICB
- the procedures to be followed during meetings; and
- the process to delegate functions.

5.1.2 The Standing Orders apply to all committees and sub-committees of the ICB unless specified otherwise in terms of reference which have been agreed by the Board.

5.1.3 A full copy of the Standing Orders⁷⁴ is included in Appendix 2 and form part of this constitution.

5.2 Standing Financial Instructions (SFIs)

5.2.1 The ICB has agreed a set of SFIs which include the delegated limits of financial authority set out in the SoRD.

5.2.2 A copy of the SFIs is published in the Governance Handbook.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

6 Arrangements for Conflict of Interest Management and Standards of Business Conduct

6.1 Conflicts of Interest⁷⁵

[subject to change in line with NHS England guidance⁷⁶]

- 6.1.1 As required by section 14Z30 of the 2006 Act, the ICB has made arrangements to manage any actual and potential conflicts of interest to ensure that decisions made by the ICB will be taken and seen to be taken without being unduly influenced by external or private interest and do not, (and do not risk appearing to) affect the integrity of the ICB's decision-making processes.
- 6.1.2 The ICB has agreed policies and procedures for the identification and management of conflicts of interest. These are contained within the Standards of Business Conduct and Declarations of Interest Policy which is published on the website⁷⁷
- 6.1.3 All Board, committee and sub-committee members, and employees of the ICB, will comply with the ICB policy on conflicts of interest in line with their terms of office and/ or employment. This will include but not be limited to declaring all interests on a register that will be maintained by the ICB.
- 6.1.4 The ICB will, as a minimum, publish the registers of conflicts of interest and gifts and hospitality of decision making staff at least annually on the ICB website and make them available at our headquarters upon request.
- 6.1.5 All delegation arrangements made by the ICB under Section 65Z5 of the 2006 Act will include a requirement for transparent identification and management of interests and any potential conflicts in accordance with suitable policies and procedures comparable with those of the ICB.
- 6.1.6 Where an individual, including any individual directly involved with the business or decision-making of the ICB and not otherwise covered by one of the categories above, has an interest, or becomes aware of an interest which could lead to a conflict of interests in the event of the ICB considering an action or decision in relation to that interest, that must be considered as a potential conflict, and is subject to the provisions of this Constitution, the Standards of Business Conduct and Declarations of Interest Policy⁷⁸.
- 6.1.7 The ICB has appointed the Audit Chair to be the Conflicts of Interest Guardian⁷⁹. In collaboration with the ICB's governance lead, their role is to:

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

- a. Act as a conduit for members of the public and members of the partnership who have any concerns with regards to conflicts of interest;
- b. Be a safe point of contact for employees or workers to raise any concerns in relation to conflicts of interest;
- c. Support the rigorous application of conflict of interest principles and policies;
- d. Provide independent advice and judgment to staff and members where there is any doubt about how to apply conflicts of interest policies and principles in an individual situation;
- e. Provide advice on minimising the risks of conflicts of interest.

6.2 Principles⁸⁰

6.2.1 In discharging our functions the ICB will abide by the following principles:

- a. Safeguard system-led commissioning, whilst ensuring objective investment decisions;
- b. Act in a way that demonstrates that they are acting fairly and transparently and in the best interests of their patients and ICB population;
- c. Act in a way that upholds confidence and trust in the NHS and system partners;
- d. Recognition that the ICB requires a diversity of perspectives in order for it to make good decisions; therefore interests will be managed sensibly and proportionately in line with NHSE Guidance and the ICB's Standards of Business Conduct and Declarations of Interest Policy.
- e. Decision making will be made with a regard to the Triple Aim: considering the effects of the decisions on: the health and wellbeing of the people of England; the quality of services provided or arranged by both the ICB and other relevant bodies and the sustainable and efficient use of resources by the ICB and other relevant bodies.

6.3 Declaring and Registering Interests

6.3.1 The ICB maintains registers⁸¹ of the interests of:

- a. Members of the ICB
- b. Members of the Board's committees and sub-committees
- c. Its employees

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

- 6.3.2 In accordance with section 14Z30(2) of the 2006 Act registers of interest for committees and decision making staff are published on the ICB website [insert link] and are available on request from the ICB.⁸²
- 6.3.3 All relevant persons as per 6.1.3 and 6.1.6 must declare any conflict or potential conflict of interest relating to decisions to be made in the exercise of the ICB's commissioning functions.
- 6.3.4 Declarations should be made as soon as reasonably practicable after the person becomes aware of the conflict or potential conflict and in any event within 28 days. This could include interests an individual is pursuing. Interests will also be declared on appointment and during relevant discussion in meetings.
- 6.3.5 All declarations will be entered in the registers as per 6.3.1
- 6.3.6 The ICB will ensure that, as a matter of course, declarations of interest are made and confirmed, or updated at least annually.
- 6.3.7 Interests⁸³ (including gifts and hospitality) of decision-making staff will remain on the public register for a minimum of six months. In addition, the ICB will retain a record of historic interests and offers/receipt of gifts and hospitality for a minimum of six years after the date on which it expired. The ICB's published register of interests states that historic interests are retained by the ICB for the specified timeframe and details of whom to contact to submit a request for this information.
- 6.3.8 Activities funded in whole or in part by third parties who may have an interest in ICB business such as sponsored events, posts and research will be managed in accordance with the ICB policy to ensure transparency and that any potential for conflicts of interest are well-managed.

6.4 Standards of Business Conduct

- 6.4.1 Board members, employees, committee and sub-committee members of the ICB will at all times comply with this Constitution and be aware of their responsibilities as outlined in it. They should:
- a. act in good faith and in the interests of the ICB;
 - b. follow the Seven Principles of Public Life; set out by the Committee on Standards in Public Life (the Nolan Principles);
 - c. comply with the ICB Standards of Business Conduct and Declarations of Interest Policy.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

- 6.4.2 Individuals contracted to work on behalf of the ICB or otherwise providing services or facilities to the ICB will be made aware of their obligation to declare conflicts or potential conflicts of interest. This requirement will be written into their contract for services and is also outlined in the ICB's Standards of Business Conduct and Declarations of Interest policy.

DRAFT 0.5

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

7 Arrangements for ensuring Accountability and Transparency

7.1.1 The ICB will demonstrate its accountability to local people, stakeholders and NHS England in a number of ways, including by upholding the requirement for transparency in accordance with paragraph 11(2) of Schedule 1B to the 2006 Act.

7.2 Principles⁸⁴

- 7.2.1 Create an organisational culture that encourages and enables transparency and involvement.
- 7.2.2 Be inclusive and proactive in resolving barriers to effective involvement and participation.
- 7.2.3 Make clear the purpose of involvement and the extent to which people can expect their views to influence development of local health services;
- 7.2.4 Recognise the importance of providing feedback to people who have made their views known;
- 7.2.5 Work in partnership with other agencies
- 7.2.6 Build upon best practice and be open to innovative and proven approaches from within and outwith the NHS;
- 7.2.7 Provide support and training to staff to equip them for this role, and
- 7.2.8 provide information that is clear and easy to understand, free of jargon and in plain language.

7.3 Meetings and publications

- 7.3.1 Board and committee meetings will be held in public except where a resolution is agreed to exclude the public on the grounds that it is believed to not be in the public interest.
- 7.3.2 Papers and minutes of all meetings held in public will be published.
- 7.3.3 Annual accounts will be externally audited and published.
- 7.3.4 A clear complaints process will be published.
- 7.3.5 The ICB will comply with the Freedom of Information Act 2000 and with the Information Commissioner Office requirements regarding the publication of information relating to the ICB.
- 7.3.6 information will be provided to NHS England as required.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

7.3.7 The Constitution and Governance Handbook will be published as well as other key documents including but not limited to:

- a. Declarations of Interest and Conflicts of Interest policy
- b. Registers of interests⁸⁵
- c. Key policies
- d. Functions and Decision Making Map
- e. Committee Structure
- f. Remuneration Guidance
- g. Delegation Agreement Summaries

7.3.8 The ICB will publish, with our partner NHS trusts and NHS foundation trusts, a plan at the start of each financial year that sets out how the ICB proposes to exercise its functions during the next five years. The plan will explain how the ICB proposes to discharge its duties under:

- section 14Z34 (improvement in quality of services),
- section 14Z35 (reducing inequalities),
- section 14Z43 (have regard to effect of decisions)
- section 14Z44 (public involvement and consultation), and
- sections 223H and 223J (financial duties).

and

- proposed steps to implement the joint local health and wellbeing strategies for the population covered by the ICB⁸⁶

7.4 Scrutiny and Decision Making

7.4.1 At least two independent non-executive members will be appointed to the board including the Chair; and all of the board and committee members will comply with the Nolan Principles of Public Life and meet the criteria described in the Fit and Proper Person Test.

7.4.2 Healthcare services will be arranged in a transparent way, and decisions around who provides services will be made in the best interests of patients, taxpayers and the population, in line with the rules set out in the NHS Provider Selection Regime.

7.4.3 The ICB will comply with the requirements of the NHS Provider Selection Regime including:⁸⁷

- a. Ensuring decision making structures are in place to allow for decisions around arranging healthcare services to be made.
- b. Ensuring governance structures are in place to deal with any challenges that may follow decisions about provider selection.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

- c. Publishing the ICB's intentions for arranging services in advance.
- d. Publishing contracts awarded and maintaining records of decision making and management of conflicts of interest.
- e. Ensuring that audit arrangements are in place.

7.4.4 The ICB will comply with local authority health overview and scrutiny requirements.

7.5 Annual Report

7.5.1 The ICB will publish an annual report in accordance with any guidance published by NHS England and which sets out how it has discharged its functions and fulfilled its duties in the previous financial year and in particular how it has discharged its duties under sections

- a. 14Z34 (improvement in quality of services),
- b. 14Z35 (reducing inequalities),
- c. 14z43 (have regard to the effect of decisions)
- d. 14Z44 (public involvement and consultation), and

7.5.2 The annual report will also review the extent to which the ICB has exercised its functions in accordance with the plans published under section

- a. 14Z50 (Integrated Care System plan), and
- b. 14Z54 (capital resource use plan), and

7.5.3 Review any steps the board has taken to implement any joint health and wellbeing strategy to which it was required to have regard under section 116B(1) of the Local Government and Public Involvement in Health Act 2007.

8 Arrangements for Determining the Terms and Conditions of Employees.

8.1.1 The ICB may appoint employees, pay them remuneration and allowances as it determines and appoint staff on such terms and conditions as it determines.

8.1.2 The Board has established a Remuneration Committee⁸⁸ which is chaired by a Non-Executive member other than the Chair or Audit Chair.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

- 8.1.3 The membership of the Remuneration Committee is determined by the Board. No employees may be a member of the Remuneration Committee but the Board ensures that the Remuneration Committee has access to appropriate advice by:
- a. Ensuring that HR advisers are in attendance as appropriate
 - b. Other officers, employees or advisors may be invited to attend all or part of meetings of the committee to provide advice or support particular discussion as appropriate
 - c. Receiving benchmarking information where available and appropriate
- 8.1.4 The Board may appoint independent members or advisers to the Remuneration Committee who are not members of the board.
- 8.1.5 The main purpose of the Remuneration Committee is to exercise the functions of the ICB relating to paragraphs 17 to 19 of Schedule 1B to the 2006 Act. The terms of reference agreed by the board are published in the Governance Handbook on the ICB's website [insert link]
- 8.1.6 The duties of the Remuneration Committee include⁸⁹ the following. Full details are set out in the Terms of Reference. (below is taken from model Terms of Reference)
- a. For the Chief Executive, Directors and other Very Senior Managers:

Determine all aspects of remuneration including but not limited to salary, (including any performance-related elements) bonuses, pensions and cars;
Determine arrangements for termination of employment and other contractual terms and non-contractual terms.
 - b. For all staff:
Determine the ICB pay policy (including the adoption of pay frameworks such as Agenda for Change);
Oversee contractual arrangements;
Determine the arrangements for termination payments and any special payments following scrutiny of their proper calculation and taking account of such national guidance as appropriate.
 - c. Oversee the arrangements for the performance review for directors/senior managers;
 - d. Receive assurance in relation to ICB statutory duties relating to people such as compliance with employment legislation including such as Fit and Proper Person Regulation (FPPR).

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

- 8.1.7 The ICB may make arrangements for a person to be seconded to serve as a member of the ICB's staff.

9 Arrangements for Public Involvement

9.1.1 In line with section 14Z44(2) of the 2006 Act the ICB has made arrangements to secure that individuals to whom services which are, or are to be, provided pursuant to arrangements made by the ICB in the exercise of its functions, and their carers and representatives, are involved (whether by being consulted or provided with information or in other ways) in:

- a. the planning of the commissioning arrangements by the Integrated Care Board
- b. the development and consideration of proposals by the ICB
- c. for changes in the commissioning arrangements where the implementation of the proposals would have an impact on the manner in which the services are delivered to the individuals (at the point when the service is received by them), or the range of health services available to them, and
- d. decisions of the ICB affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.

9.1.2 In line with section 14Z52 of the 2006 Act the ICB has made the following arrangements to consult its population on its system plan:

- a. The ICB will engage or consult, as appropriate, with its population on its system plan and will have regard to NHS Guidance on consultation and engagement and the ICB's Patient and Public Involvement Strategy. This will include the involvement of each relevant Health and Wellbeing Board.
- b. The ten principles set out by NHS England, and described at section 9.1.3 will apply

9.1.3 The ICB has adopted the ten principles set out by NHS England for working with people and communities⁹⁰.

- a. Put the voices of people and communities at the centre of decision-making and governance, at every level of the ICS.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

- b. Start engagement early when developing plans and feed back to people and communities how it has influenced activities and decisions.
- c. Understand your community's needs, experience and aspirations for health and care, using engagement to find out if change is working.
- d. Build relationships with excluded groups – especially those affected by inequalities.
- e. Work with Healthwatch and the voluntary, community and social enterprise sector as key partners.
- f. Provide clear and accessible public information about vision, plans and progress to build understanding and trust.
- g. Use community development approaches that empower people and communities, making connections to social action.
- h. Use co-production, insight and engagement to achieve accountable health and care services.
- i. Co-produce and redesign services and tackle system priorities in partnership with people and communities.
- j. Learn from what works and build on the assets of all partners in the ICS – networks, relationships, activity in local places.

9.1.4 These principles will be used when developing and maintaining arrangements for engaging with people and communities.

9.1.5 These arrangements, include⁹²:

- a. A Patient and Public Involvement Strategy
- b. A system-wide Engagement Framework to ensure consistently high standards of engagement
- c. Ensuring sufficient resources and training are available to support effective engagement
- d. Arranging system-wide or place-based public events
- e. Appointment of a Non Executive Member with a specific role to seek assurance on the ICB's arrangements for discharging its duties in relation to patient and public involvement.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

Appendix 1: Definitions of Terms Used in This Constitution

2006 Act	National Health Service Act 2006, as amended by the Health and Social Care Act 2012 and the Health and Care Act 2022
ICB Board	Members of the ICB
Area	The geographical area that the ICB has responsibility for, as defined in part 2 of this constitution
Committee	A committee created and appointed by the ICB Board.
Sub-Committee	A committee created and appointed by and reporting to a committee.
Integrated Care Partnership	The joint committee for the ICB's area established by the ICB and each responsible local authority whose area coincides with or falls wholly or partly within the ICB's area.
Place-Based Partnership	Place-based partnerships are collaborative arrangements responsible for arranging and delivering health and care services in a locality or community. They involve the Integrated Care Board, local government and providers of health and care services, including the voluntary, community and social enterprise sector, people and communities, as well as primary care provider leadership, represented by Primary Care Network clinical directors or other relevant primary care leaders.
Ordinary Member	The Board of the ICB will have a Chair and a Chief Executive plus other members. All other members of the Board are referred to as Ordinary Members.
Health Service Body	Health service body as defined by section 9(4) of the NHS Act 2006 or (b) NHS Foundation Trusts.
	<i>ICBs should add local definitions as required and should always include any local terms that refer to legally prescribed roles or functions.</i>

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

Appendix 2: Standing Orders

1. Introduction⁹⁴

1.1. These Standing Orders have been drawn up to regulate the proceedings of the NHS North East and North Cumbria Integrated Care Board so that the ICB can fulfil its obligations as set out largely in the 2006 Act (as amended). They form part of the ICB's Constitution⁹⁵.

2. Amendment and review

2.1. The Standing Orders are effective from 1 April 2022⁹⁶

2.2. Standing Orders will be reviewed on an annual basis or sooner if required.

2.3. Amendments to these Standing Orders will be made as per Clause 1.6 of the Constitution.

2.4. All changes to these Standing Orders will require an application to NHS England for variation to the ICB constitution and will not be implemented until the constitution has been approved.

3. Interpretation, application and compliance

3.1. Except as otherwise provided, words and expressions used in these Standing Orders shall have the same meaning as those in the main body of the ICB Constitution and as per the definitions in Appendix 1.

3.2. These standing orders apply to all meetings of the Board, including its committees and sub-committees unless otherwise stated. All references to Board are inclusive of committees and sub-committees unless otherwise stated.

3.3. All members of the Board, members of committees and sub-committees and all employees, should be aware of the Standing Orders and comply with them. Failure to comply may be regarded as a disciplinary matter.

3.4. In the case of conflicting interpretation of the Standing Orders, the Chair, supported with advice from *[tbc when structure confirmed: the ICB's Senior Governance Advisor]* will provide a settled view which shall be final.

3.5. All members of the Board, its committees and sub-committees and all employees have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

3.6. If, for any reason, these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board for action or ratification and the Audit Committee for review.

4. Meetings of the Integrated Care Board

4.1. Calling Board Meetings⁹⁷

4.1.1 Meetings of the Board of the ICB shall be held at regular intervals⁹⁸ at such times and places⁹⁹ as the ICB may determine.

4.1.2 In normal circumstances, each member of the Board will be given not less than one month's notice in writing of any meeting to be held.

However:

- a) The Chair may call a meeting at any time by giving not less than 14 calendar days' notice in writing.
- b) One third of the members of the Board may request the Chair to convene a meeting by notice in writing, specifying the matters which they wish to be considered at the meeting. If the Chair refuses, or fails, to call a meeting within seven calendar days of such a request being presented, the Board members signing the requisition may call a meeting by giving not less than 14 calendar days' notice in writing to all members of the Board specifying the matters to be considered at the meeting.
- c) In emergency situations the Chair may call a meeting with 24 hours notice by setting out the reason for the urgency and the decision to be taken.

4.1.3 A public notice of the time and place of the meeting and how to access the meeting shall be given by posting it at the offices of the ICB body and electronically at least three clear days before the meeting or, if the meeting is convened at shorter notice, then at the time it is convened.

4.1.4 The agenda and papers for meetings will be published electronically in advance of the meeting excluding, if thought fit, any item likely to be addressed in part of a meeting is not likely to be open to the public.

4.2. Chair of a meeting

4.2.1. The Chair of the ICB shall preside over meetings of the Board.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

- 4.2.2. If the Chair is absent, or is disqualified from participating by a conflict of interest, the ICB Chair will nominate a deputy, which will normally be the Senior Independent Non-Executive Member. If the nominated deputy is not present at a meeting, then the assembled members may appoint a deputy from the remaining Independent Members.
- 4.2.3. The Board shall appoint a Chair to all committees and sub-committees that it has established. The appointed committee or sub-committee Chair will preside over the relevant meeting. Terms of reference for committees and sub-committees will specify arrangements for occasions when the appointed Chair is absent. The appointed Chair will be accountable to the Chair of the ICB.

4.3. Agenda, supporting papers and business to be transacted

- 4.3.1. The agenda for each meeting will be drawn up and agreed by the Chair¹⁰² of the meeting.
- 4.3.2. Except where the emergency provisions apply, supporting papers for all items must be submitted at least ten working days before the meeting takes place. The agenda and supporting papers will be circulated to all members of the Board at least five calendar days before the meeting.
- 4.3.3. Agendas and papers for meetings open to the public, including details about meeting dates, times and venues, will be published on the ICB's website at [insert link].

4.4. Petitions

- 4.4.1. Where a petition has been received by the ICB it shall be included as an item for the agenda of the next meeting of the Board.

4.5. Nominated Deputies¹⁰³

- 4.5.1. With the permission of the person presiding over the meeting, the Executive Directors and the Partner Members of the Board may nominate a deputy to attend a meeting of the Board that they are unable to attend. The deputy may speak and vote on their behalf.
- 4.5.2. The decision of person presiding over the meeting regarding authorisation of nominated deputies is final.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

4.6. Virtual attendance at meetings¹⁰⁴

- 4.6.1. The Board of the ICB and its committees and sub-committees may meet virtually using telephone, video and other electronic means when necessary, unless the terms of reference prohibit this.

4.7. Quorum¹⁰⁵

- 4.7.1. The quorum for meetings of the Board will be one third of the members, including:
- a) Chair or Deputy Chair (or independent member presiding over the meeting as in 4.4.2)
 - b) Either the Chief Executive or the Director of Finance
 - c) Either The Medical Director or the Director of Nursing
 - d) At least one independent member
 - e) At least one Partner Member
- 4.7.2. For the sake of clarity:
- a) No person can act in more than one capacity when determining the quorum.
 - b) An individual who has been disqualified from participating in a discussion on any matter and/or from voting on any motion by reason of a declaration of a conflict of interest, shall no longer count towards the quorum.
- 4.7.3. For all committees and sub-committees, the details of the quorum for these meetings and status of deputies are set out in the appropriate terms of reference.
- 4.7.4. In the event that the quorum cannot be achieved due to a member or members being disqualified from taking part in a vote or discussion due to a declared interest the chair of the meeting will determine the action to be taken in accordance with the Constitution.

In these circumstances, an alternative quoracy of one third of the non-conflicted members will apply. This must include at least one Non Executive Member, the Accountable Officer or Chief Finance Officer and one other member of the Board.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

4.8. Vacancies

- 4.8.1. In the event of vacancy or defect in appointment the following temporary arrangement for quorum will apply: *(awaiting NHSE clarification on the meaning of this clause)*

where temporary arrangements have been put in place to fill the vacancy or defect, then this individual will count towards the quoracy, including if they are temporarily acting in the roles of those members specifically listed in quoracy requirements (eg. Director of Nursing, Director of Finance);

where temporary arrangements have not been put in place, a reduced quoracy will be proposed to the Board by the Chair and Chief Executive in conjunction with the Chair of the Audit Committee.

4.9. Decision making

- 4.9.1. The ICB has agreed to use a collective model of decision-making that seeks to find consensus between system partners and make decisions based on unanimity as the norm, including working through difficult issues where appropriate.

- 4.9.2. Generally it is expected that decisions of the ICB will be reached by consensus. Should this not be possible then a vote will be required. The process for voting, which should be considered a last resort, is set out below:

- a) All members of the Board who are present at the meeting will be eligible to cast one vote each.
- b) In no circumstances may an absent member vote by proxy¹⁰⁶. Absence is defined as being absent at the time of the vote but this does not preclude anyone attending by teleconference or other virtual mechanism from participating in the meeting, including exercising their right to vote if eligible to do so.
- c) For the sake of clarity, any additional Participants and Observers¹⁰⁷ (as detailed within paragraph 5.6. of the Constitution) will not have voting rights.
- d) A resolution will be passed if more votes are cast for the resolution than against it.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

- e) If an equal number of votes are cast for and against a resolution, then the Chair (or in their absence, the person presiding over the meeting) will have a second and casting vote.
- f) Should a vote be taken, the outcome of the vote, and any dissenting views, must be recorded in the minutes of the meeting.

Disputes

- 4.9.3. if consensus cannot be reached, the chair may make decisions on behalf of the board where there is disagreement. Where necessary boards may draw on third party support such as peer review or mediation by NHS England and NHS Improvement.

Urgent decisions

- 4.9.4. In the case urgent decisions and extraordinary circumstances, every attempt will be made for the Board to meet virtually. Where this is not possible the following will apply.
- 4.9.5. The powers which are reserved or delegated to the Board, may for an urgent decision be exercised by the Chair and Chief Executive (or relevant lead director in the case of committees)¹⁰⁸ subject to every effort having made to consult with as many members as possible in the given circumstances.
- 4.9.6. The exercise of such powers shall be reported to the next formal meeting of the Board for formal ratification and the Audit Committee for oversight.

4.10. Minutes

- 4.10.1. The names and roles of all members present shall be recorded in the minutes of the meetings.
- 4.10.2. The minutes of a meeting shall be drawn up and submitted for agreement at the next meeting where they shall be signed by the person presiding at it.
- 4.10.3. No discussion shall take place upon the minutes except upon their accuracy or where the person presiding over the meeting considers discussion appropriate.
- 4.10.4. Where providing a record of a meeting held in public, the minutes shall be made available to the public.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

4.11. Admission of public and the press

- 4.11.1. In accordance with Public Bodies (Admission to Meetings) Act 1960 All meetings of the ICB at which public functions are exercised will be open to the public.
- 4.11.2. The Board may resolve to exclude the public from a meeting or part of a meeting where it would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or of the proceedings or for any other reason permitted by the Public Bodies (Admission to Meetings) Act 1960 as amended or succeeded from time to time.
- 4.11.3. The person presiding over the meeting shall give such directions as he/she thinks fit with regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board's business shall be conducted without interruption and disruption.
- 4.11.4. As permitted by Section 1(8) Public Bodies (Admissions to Meetings) Act 1960 as amended from time to time) the public may be excluded from a meeting suppress or prevent disorderly conduct or behaviour.
- 4.11.5. Matters to be dealt with by a meeting following the exclusion of representatives of the press, and other members of the public shall be confidential to the members of the Board.

5. Suspension of Standing Orders

- 5.1. In exceptional circumstances, except where it would contravene any statutory provision or any direction made by the Secretary of State for Health and Social Care or NHS England, any part of these Standing Orders may be suspended by the Chair in discussion with at least two other members,
- 5.2. A decision to suspend Standing Orders together with the reasons for doing so shall be recorded in the minutes of the meeting.
- 5.3. A separate record of matters discussed during the suspension shall be kept. These records shall be made available to the Audit Committee for review of the reasonableness of the decision to suspend Standing Orders.

Draft subject to the passage of the Health and Care Bill through Parliament

DRAFT not for onward circulation

6. Use of seal and authorisation of documents.

The ICB may have a seal for executing documents where necessary. The seal will be kept securely in a locked facility. The following are authorised to authenticate its use by their signature:

- The Chief Executive
- The Chief Operating Officer
- The Chair of the ICB
- The Director of Finance

DRAFT 0.5