

# Corporate governance of the Financial Conduct Authority

Adopted by resolution of the Board on  
28 October 2022

**August 2023**

# Contents

<b>1.</b>	Introduction	3
<b>2.</b>	The FCA's Constitution and History	4
<b>3.</b>	The Role of the Board	6
<b>4.</b>	The Role of the Chair and Chief Executive of the FCA	8
<b>5.</b>	Provisions relating to the Role of the Non-Executive Directors (NEDs)	10
<b>6.</b>	The Role of the Secretary	12
<b>7.</b>	Delegation of Authority by the Board	13
<b>8.</b>	Further delegation of decision-making	15
<b>9.</b>	Schedule of Matters Reserved to the Board	16
<b>10.</b>	Terms of Reference of FCA Committees	22
<b>10.1</b>	Terms of Reference of the Audit Committee	22
<b>10.2</b>	Terms of Reference of the Risk Committee <sup>1</sup>	31
<b>10.3</b>	Terms of Reference of the Policy and Rules Committee	36
<b>10.4</b>	Terms of Reference of the People Committee	40
<b>10.5</b>	Terms of Reference of the Performance Committee <sup>2</sup>	47
<b>10.6</b>	Terms of Reference of the Oversight Committee	51
<b>10.7</b>	Terms of Reference of the Regulatory Decisions Committee	55
<b>10.8</b>	Terms of Reference of the Competition Decisions Committee	58
<b>11.</b>	Diagram of FCA Executive Committee Structure	63
<b>12.</b>	FCA Articles of Association	64



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<sup>1</sup> Updated July 2023

<sup>2</sup> NEW July 2023

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## Chapter 1

# Introduction

- 1.1** The purpose of this document is to summarise the corporate governance framework within the Financial Conduct Authority (the FCA). The corporate governance framework defines the way in which the FCA is constituted, directed and controlled by its governing body, the Board. It specifies the distribution of rights and responsibilities from the Board to its committees, to various other committees carrying out particular regulatory functions and to executive level. In order to do this the document outlines how the FCA is constituted, the role of the Board, the Chair, the Chief Executive, the Directors, and the Secretary and sets out which decisions are reserved specifically to the Board (the "Schedule of Matters Reserved to the Board") and the process by which the Board delegates some other responsibilities to committees or individuals.
- 1.2** S.3C of the Financial Services and Markets Act 2000 as amended (FSMA) states that, in managing its affairs, the FCA must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it. As the FCA is a company limited by guarantee, it is not obliged to comply with the UK Corporate Governance Code (the Code). However, the Board is committed to meeting high standards of corporate governance and has decided that the FCA should comply with the Code where appropriate and applicable. The Board will present a corporate governance statement within the FCA's Annual Report each year that will provide an explanation of how the FCA is governed in line with the principles of the Code.

## Chapter 2

# The FCA's Constitution and History

- 2.1** The FCA is a company limited by guarantee (Company No. 1920623). It was incorporated on 7 June 1985 as The Securities and Investments Board Limited and its name was changed on 20 August 1987 to The Securities and Investments Board (SIB). Following the merger of banking supervision and investment services regulation, the SIB changed its name to the Financial Services Authority (FSA) on 28 October 1997. In June 1998, responsibility for banking supervision was transferred to the FSA from the Bank of England and in May 2000 the FSA took over the role of UK Listing Authority from the London Stock Exchange. The Financial Services and Markets Act (FSMA), which was implemented on 1 December 2001, transferred to the FSA the responsibilities of several other organisations:
- a.** Building Societies Commission
  - b.** Friendly Societies Commission
  - c.** Investment Management Regulatory Organisation
  - d.** Personal Investment Authority
  - e.** Register of Friendly Societies
  - f.** Securities and Futures Authority.
- 2.2** FSMA also gave the FSA responsibility for taking action to prevent market abuse. In October 2004, the FSA took on responsibility for mortgage regulation and, in January 2005, the regulation of general insurance business. On 1 April 2013, following the enactment of section 1A of FSMA, the organisation was renamed the Financial Conduct Authority (FCA). The FCA must comply with the requirements contained in Schedule 1ZA of FSMA regarding how it is constituted.
- 2.3** The FCA is governed by a Board with members comprising: a Chair and a Chief Executive appointed by HM Treasury (Treasury); the Bank of England Deputy Governor for prudential regulation; two non-executive members who are appointed jointly by the Secretary of State for Business, Innovation and Skills and the Treasury, and at least one other member appointed by the Treasury. The majority of the Board members are Non-Executive Directors (NEDs).
- 2.4** Appointments to the Board of the FCA are subject to the Code of Practice issued by the Office of the Commissioner for Public Appointments.
- 2.5** FSMA requires that the FCA has a number of accountability measures in place, including the requirement to report annually on the extent to which the FCA's regulatory objectives have been met and to hold an Annual Public Meeting (APM) every year. The APM must be held not later than three months after the Annual Report of the FCA has been submitted to the Treasury.
- 2.6** The FCA is funded by the industry it regulates through statutory fee-raising powers and operates independently of the government, but is accountable to Parliament through obligations set out in FSMA.

- 2.7** The FCA is required to make and maintain effective arrangements for consulting practitioners and consumers on the extent to which its general policies and practices are consistent with its general duties. It does this through the Consumer Panel, Practitioner Panel, Smaller Business Practitioner Panel and Markets Practitioner Panel. More information about the ways in which the FCA ensures its duty of accountability in this area is fulfilled can be found on its website.
- 2.8** The Financial Services (Banking Reform) Act 2013 required the FCA to incorporate The Payment Systems Regulator Limited (the Payment Systems Regulator) and this was done on 1 April 2014. The Payment Systems Regulator is a wholly-owned subsidiary of the FCA and has its own corporate governance documents.

## Chapter 3

# The Role of the Board

- 3.1** The Board is the governing body of the FCA. It sets the FCA's strategic direction and ensures its long-term success. It also ensures that the necessary financial and human resources are in place for the FCA to meet its statutory objectives. It provides leadership of the organisation within a framework of prudent and effective controls which enables risk to be assessed and managed. It also reviews management performance. The Board sets the FCA's own behavioural standards, for example through the Code of Conduct and the Corporate Responsibility Policy.
- 3.2** The Board's role includes:
- a.** determining the matters that should be reserved to it for decision, which shall include the exercise of the FCA's legislative functions and other matters as set out in the Schedule of Matters Reserved to the Board from time to time. The Schedule of Matters Reserved to the Board is set out in this document
  - b.** making strategic decisions affecting the future operation of the FCA
  - c.** overseeing the discharge by the executive management of the day-to-day business of the FCA
  - d.** setting appropriate policies to manage risks to the FCA's operations and the achievement of its regulatory objectives
  - e.** seeking regular assurance that the system of internal control is effective in managing risks in the manner it has approved
  - f.** maintaining a sound system of financial control
  - g.** taking specific decisions, outside those specified in the Schedule of Matters Reserved to the Board, which the Board or executive management consider to be of a novel or contentious nature or to be of such significance that they should be taken by the Board
  - h.** maintaining high level relations with other organisations and authorities, including government, the Financial Services Compensation Scheme, the Financial Ombudsman Service and the Consumer, Practitioner, Smaller Business Practitioner, Markets Practitioner and Listing Authority Advisory Panels
  - i.** establishing and maintaining arrangements to ensure accountability regarding decisions of committees of the Board and executive management, through periodic reporting.
- 3.3** In order to discharge its duties effectively the Board normally meets at least ten times a year. Additional meetings of the directors are held as required. The quorum needed for business to be carried out is five directors as set out in the Articles.
- 3.4** The Board members may request information from any employee of the FCA and this includes calling any employee to attend a Board meeting to answer questions on a particular matter.

- 3.5** Any Board member who requires professional advice on a matter relating to their duties on the Board may make a request to the Secretary to have direct access to the FCA's professional advisers. If the Board member considers it essential to receive independent professional advice on a matter, this may be obtained at the FCA's expense within reasonable financial limits after reference to the Chair.

## Chapter 4

# The Role of the Chair and Chief Executive of the FCA

- 4.1** The UK Corporate Governance Code states that there should be a clear division of responsibilities at the head of any organisation between the running of the Board and the executive responsibility for the running of the organisation. No one individual should have unfettered powers of decision. The division of responsibilities between the Chair and Chief Executive are set out in writing below and may only be changed with the agreement of the Board.
- 4.2** The responsibilities of the Chair and Chief Executive of the FCA are not exercised by the same individual and are clearly defined. The Board will review the objectives for both the Chair and the Chief Executive annually and ensure that there is a clear division between their duties.
- 4.3** The key responsibilities of the Chair include:
- a.** Leading an effective Board, in particular through:
    - i.** ensuring that the Board meets with sufficient frequency
    - ii.** fostering an open, inclusive discussion which challenges executives, where appropriate
    - iii.** ensuring that the Board devotes sufficient time and attention to the matters within its remit, including matters reserved for the Board
    - iv.** ensuring that the Board and its members have the information necessary to perform its and their tasks
    - v.** effective decision-making processes, and
    - vi.** evaluating the performance of the Board and individual directors
  - b.** Maintaining a productive relationship with the FCA's Chief Executive and providing support and challenge (as appropriate) in achieving the objectives of the FCA.
  - c.** With the Chief Executive, managing key relationships with a wide range of both internal and external stakeholders to raise the FCA's profile and its policies.
  - d.** Representing the FCA on particular national and international financial institutions.
  - e.** Acting as a focus for the accountability of the FCA, for example, by chairing the FCA's Annual Public Meeting, giving evidence to parliamentary select committees and communicating with Government ministers on significant issues.
- 4.4** The Chair has no executive responsibility for the day-to-day running of the FCA but undertakes their responsibilities as Chair by fostering the relationships between executive and non-executive directors. In addition, the Chair ensures that the FCA's strategy is formulated clearly and is well understood internally and externally. The Chair provides a source of counsel and challenge to the Chief Executive on how the FCA is run. The Chair has an important externally facing role with stakeholders. To enable the Chair to undertake these duties and represent the FCA publicly, the Chief Executive ensures that the Chair is properly briefed on FCA business.



- 4.5** The Chair and Chief Executive discuss all major issues and emerging policies through frequent and normally informal meetings, and specifically discuss any contentious matters or those likely to set significant precedent.
- 4.6** The Chief Executive is responsible for implementing the strategy agreed by the Board, in the formulation of which the Chief Executive will have played a major part. They are also responsible for the leadership of the organisation and managing it within the authorities delegated to them by the Board. All FCA staff – other than the Chair’s immediate staff, the Director of Internal Audit and the Company Secretary, ultimately report to the Chief Executive Officer.
- 4.7** The key responsibilities of the Chief Executive include:
- a.** reporting regularly to the Board with appropriate, timely and quality information so the Board can discharge its responsibilities effectively informing and consulting the Chair on all matters of significance to the Board so that the Chair and Board can properly discharge their responsibilities
  - b.** developing and delivering the strategic objectives agreed with the Board
  - c.** recommending to the Board significant operational changes and major capital expenditures where these are beyond the Chief Executive’s delegated authority
  - d.** assigning responsibilities clearly to senior management and overseeing the establishment of effective risk management and control systems
  - e.** recruiting, developing and retaining talented people to work at the FCA and, in particular, establishing a strong management team which is fairly and fully evaluated
  - f.** communicating throughout the FCA the strategic objectives and the values of the FCA agreed with the Board, and ensuring that these are achieved in practice
  - g.** sharing with the Chair and with other members of the FCA senior management the responsibility for communicating the FCA’s messages externally and managing stakeholder relationships
  - h.** representing the FCA on particular national and international financial institutions
  - i.** taking such steps as are necessary to ensure that the PSR is, at all times, capable of exercising its statutory functions
  - j.** membership of the Financial Policy Committee and the Board of the Prudential Regulation Authority.

## Chapter 5

# Provisions relating to the Role of the Non-Executive Directors (NEDs)

- 5.1** The NEDs make up the majority of the FCA Board and have a variety of skills and experience that are appropriate for the requirements of the FCA.
- 5.2** The key responsibilities of Non-Executive Directors include:
- a.** constructively challenging and helping to develop the strategic direction of the organisation
  - b.** scrutinising the performance of the organisation in meeting agreed goals and objectives and monitoring reporting
  - c.** holding the Managing Director and executive team to account for the FCA's performance and providing appropriate challenge, leadership and mentoring to the Executive Directors
  - d.** ensuring that the regulatory powers and responsibilities specifically reserved to the Board by legislation are exercised appropriately
  - e.** ensuring the FCA complies with all relevant good governance practices and legislative requirements and acts within the provisions of its Articles
  - f.** developing, promoting and acting at all times in the best interests of the FCA
  - g.** assisting in maintaining high-level relations with the FCA's key stakeholders
  - h.** ensuring appropriate policies are in place to manage risks to the organisation's operations and the achievement of its strategic objectives
  - i.** devoting time to developing and refreshing their knowledge and skills; and
  - j.** working with the executive and other board members on key issues.
- 5.3** In the event of any conflict of interest arising, whether personal or professional, all appropriate steps will be taken to protect both the director and the FCA and to ensure that all decisions are taken without any suggestion of unlawful bias.
- 5.4** The Board appoints one of the NEDs to be the Senior Independent Director to provide a sounding board for the Chair and to serve as an intermediary for the other directors when necessary.
- 5.5** The key responsibilities of the Senior Independent Director include:
- a.** acting as the sounding board to the Chair and serving as an intermediary to other Directors as necessary
  - b.** acting as a channel of communication between the Non-Executive Directors and the Chair, if required
  - c.** meeting with the Non-Executive Directors at least once a year to appraise the Chair's performance
  - d.** assisting the Chair to develop a formal internal Board effectiveness evaluation process, the themes to be discussed and agreed by the Board

- e. being available to key stakeholders and the public if they have concerns which contact through the normal channels of Chair, Chief Executive or other Executive Directors has failed to resolve or where such contact is inappropriate
- f. deputising for the Chair as required.

**5.6** The NEDs meet privately with the Chair which gives them an opportunity to discuss any concerns they may have without the executive present.

**5.7** The FCA, its directors and staff, benefit from exemption from liability for damages for anything done or omitted in the discharge, or purported discharge of the FCA's functions (FSMA Schedule 1A, part 4, paragraph 25). The FCA supplements this with indemnities in favour of individual directors.

## Chapter 6

# The Role of the Secretary

- 6.1** The Board is responsible for the appointment and removal of the Company Secretary, who is accountable to it through the Chair.
- 6.2** The Secretary provides a source of advice to Board members and is responsible for ensuring that Board procedures are followed and that applicable internal rules and regulations relating to the operation of the Board are met. In addition, the Secretary is responsible for maintaining the scheme of matters reserved to the Board and ensuring good information flows within the Board and its committees, as well as between senior executive management and NEDs. The Secretary will also arrange appropriate induction and training for all Board members.
- 6.3** The Secretary ensures that the business of the Board is compliant, where appropriate and applicable, with the UK Corporate Governance Code, the Companies Act, the Financial Services and Markets Act and all other relevant regulations and legislation. The Secretary also keeps under review all legal and regulatory developments affecting the operations of the FCA and makes sure that the directors are properly briefed about them.

## Chapter 7

# Delegation of Authority by the Board

- 7.1** The Board retains all decision-making powers except those which it has delegated to either a committee or an individual. The Schedule of Matters Reserved for Board decision is set out later in this document. All delegations by the Board continue to be without prejudice to the power of the Board to exercise the delegated functions itself.
- 7.2** The Board has established certain committees to which it has delegated specific powers, duties and decision-making responsibilities:
- a.** Audit Committee (AuditCo): AuditCo is responsible for the review and oversight of matters associated with the ability of the organisation to carry out its regulatory strategy (i.e. operational risk and execution risk) hereafter referred to as “internal” risk, on behalf of the Board. In doing so AuditCo provides assurance to the Board on the effectiveness of the internal control framework. The terms of reference for AuditCo are set out later in this document.
  - b.** Risk Committee (RiskCo)<sup>3</sup>: RiskCo is responsible for supporting the Board in meeting its responsibilities for an effective system of risk management and appropriate assurance of the adequacy and effectiveness of the FCA's system of regulation. The Committee is also responsible for ensuring that the FCA achieves its statutory and operational objectives and Mission, including the effectiveness of the mitigation of harm and the safety and soundness of its own operations. RiskCo also provides oversight of the Regulatory Decisions Committee (RDC). The terms of reference for RiskCo are set out later in this document.
  - c.** Policy and Rules Committee (PaRCo): PaRCo is responsible for supporting the Board in meeting its responsibilities when exercising its legislative functions to make policy and rules under FSMA (2000) Sch 1ZA Part 1 Paragraph 8 and in determining the general policy and principles by reference to which the FCA performs a particular legislative function. In doing so, PaRCo scrutinises proposals for new policy and rules and changes to existing policy and rules and makes recommendations to the Board. The terms of reference for PaRCo are set out later in this document.
  - d.** People Committee (PeopleCo)<sup>4</sup>: PeopleCo is responsible for approving, overseeing and reviewing the FCA's people strategy, including its culture, employment framework, its approach to appointments and organisational leadership, and its processes for engagement with its workforce. The terms of reference for PeopleCo are set out later in this document.
  - e.** Performance Committee (PerCo): PerCo is an advisory committee of the Board and supports the Board in meeting its responsibilities for an effective system of managing the performance of the FCA against its strategy and associated plans. The terms of reference for PerCo are set out later in this document.
  - f.** Oversight Committee: The Oversight Committee is responsible for providing support and advice to the Board on its relationships with the Financial Ombudsman Service, Financial Services Compensation Scheme and the Payment Systems

<sup>3</sup> Known as the External Risk & Strategy Committee until 20 January 2020.

<sup>4</sup> PeopleCo replaced the Nominations and Remuneration Committees on 23 June 2022.

Regulator in regard to the FCA's obligations in respect of each, including its statutory duties set out in the Financial Services and Markets Act and the Financial Services (Banking Reform) Act. The terms of reference for the Oversight Committee are set out later in this document.

- g.** The Regulatory Decisions Committee (RDC) exercises certain regulatory powers on behalf of the FCA, including in relation to the giving of supervisory notices, warning notices and decision notices, as described in the FCA Handbook. The primary purpose of the RDC is to advance the fairness of the FCA's enforcement process by ensuring, in certain contested cases, separation between those who conduct investigations and those who decide whether a statutory notice should be given. The terms of reference for the RDC are set out later in this document.
- h.** The Competition Decisions Committee (CDC) is a Board authorised committee, which exercises decision making powers in Competition Act 1998 investigations on behalf of the FCA including decisions on whether there has been a competition law infringement and decisions on whether to impose a financial penalty in respect of an infringement. The terms of reference for the CDC are set out later in this document.

**7.3** Subject to provisions contained in the Articles, the Board may establish other committees, consisting of such members as they think fit, and delegate to those committees the exercise of specific powers, duties and decision-making responsibilities.

**7.4** The Chief Executive may exercise any function of the FCA except where:

- a.** the function is a legislative function reserved by FSMA to the Board
- b.** the function is issuing general guidance (as defined in section 139B(5) and 333P(9) of the Financial Services and Markets Act 2000)
- c.** the function is contained in the Schedule of Matters Reserved to the Board or the terms of references of committees of the Board
- d.** the function involves a decision which the FCA's decision-taking manual reserves to the RDC
- e.** it is considered by the Chief Executive or any such committee with the appropriate delegated authority that the matter should be referred to the Board.

**7.5** When the Board exercises its legislative powers, its decision allows subsequent technical or drafting amendments to be made to the text of the relevant instrument, if they are within the scope of the Board's decision and agreed by the staff member responsible for the instrument and the General Counsel or their representative.

**7.6** The Executive Regulation and Policy Committee established by the Chief Executive may issue, amend and revoke general guidance (as defined in section 139B(5) and 333P(9) of the Financial Services and Markets Act 2000).

## Chapter 8

# Further delegation of decision-making

- 8.1** The Chief Executive may delegate authority (and, if they choose, the authority to make further delegations) to one or more individuals or committees.
- 8.2** Where functions vested in the Chief Executive are exercisable through a committee, that committee may similarly delegate that authority to one or more individuals or committees. However, any new delegation must provide for:
- a.** decisions to be made at an appropriate level
  - b.** a clear line of accountability to the Board
  - c.** any person with authority to take a decision to be entitled instead to refer it to a person or committee which is more senior
  - d.** appropriate procedures for decision making to be in place.
- 8.3** The nature and scope of delegations should be recorded centrally.
- 8.4** Existing delegations of authority to take decisions within the executive management structure remain in force until replaced by new delegations.
- 8.5** A person nominated by the Chair may discharge any function in any case of urgency where it is not practicable for the Board, Chair, Chief Executive, or other executive Board member to discharge the function. Any decisions made or actions taken under this provision must be subsequently ratified by the Board.
- 8.6** The Executive Regulation and Policy Committee established by the Chief Executive may delegate the ability to issue, amend and revoke general guidance (as defined in section 139B(5) and 333P(9) of the Financial Services and Markets Act 2000) to another executive committee. Any such delegation must provide for a clear line of authority to the Board and appropriate procedures for decision making to be in place.

## Chapter 9

# Schedule of Matters Reserved to the Board

- 9.1** The Board is the Governing Body of the FCA as required by the Financial Services and Markets Act 2000 (FSMA) Sch. 1ZA 2 (1).
- 9.2** This Schedule sets out those matters the Board reserves for decision. Except as set out in this Schedule, the Board delegates authority to the Chief Executive, with authority for further delegation.
- 9.3** This Schedule of Matters Reserved to the Board was approved by the Board on 30 January 2020.

## Legislative functions

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- 9.4** Discharge of those legislative functions of the FCA required to be exercised through the Governing Body by:
- a.** FSMA Sch. 1ZA 8(2)
  - b.** Financial Guidance and Claims Act 2018 S9(2) and 10
- 9.5** Determination of the general policy and principles by reference to which the FCA performs a particular legislative function.

## Strategy and management

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- 9.6** Responsibility for the overall leadership of the FCA and setting the organisation's values and standards.
- 9.7** Approval of the statements of responsibilities under the Senior Managers Regime for the Chair and the Chief Executive and the division of responsibilities between them.
- 9.8** Approval of the FCA's:
- a.** annual business plan
  - b.** 3-year plan
  - c.** annual operating and capital expenditure budgets and any material changes to them
  - d.** risk framework and risk tolerance statements
- 9.9** Oversight of the discharge of the FCA's operations by executive management ensuring:
- a.** competent and prudent management
  - b.** sound planning
  - c.** maintenance of sound management and internal control systems
  - d.** adequate systems of assurance and risk management
  - e.** adequate accounting and other records



f. compliance with statutory obligations

**9.10** Approval of major changes to the FCA's corporate structure (including the creation of a new business unit).

**9.11** Agreement to cease to operate any material part of the FCA's operations.

## Financial reporting and controls

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**9.12** Approval of the Annual Report and Accounts including the:

- a. Strategic Report
- b. Directors' Report
- c. Corporate Governance statement
- d. Remuneration Report

**9.13** Approval of any significant changes in accounting policies or practices.

**9.14** Approval of the delegation of financial authorities.

**9.15** Approval of treasury policies.

**9.16** Approval of the report to the Treasury on discharging the FCA's functions under FSMA.

**9.17** Approval and scrutiny of projects or programmes of contracts valued in excess of £10m in aggregate (including VAT), setting the parameters for approval of transactions within those projects or programmes by management, and approval of the arrangements for reporting to the Board.

**9.18** Approval and scrutiny of individual contracts valued in excess of £10m (including VAT) that are not part of a broader project or programme approved by the Board.

**9.19** Approval and scrutiny of individual contracts valued in excess of £5m (including VAT) that are not part of a broader project or programme and are not within the budget approved by the Board.

**9.20** Approval of any other transaction (or series of closely-related transactions) within the budget approved by the Board and valued in excess of £10m (including VAT).

**9.21** Approval of any other transaction (or series of closely-related transactions) not within the budget approved by the Board and valued in excess of £5m (including VAT).

**9.22** Approval of cost overruns of more than 5% on any project or programme approved by the Board.

## Internal controls and risk management

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**9.23** Ensuring maintenance of a sound system of internal controls including:

- a.** receiving reports on, and reviewing the effectiveness of, the FCA's internal control processes to support its strategy and objectives
- b.** undertaking an annual assessment of these processes
- c.** approving an appropriate statement on internal controls in the annual report
- d.** approving procedures for the prevention of fraud and bribery

**9.24** Ensuring maintenance of an effective system of assurance and risk management including:

- a.** a risk management system which both identifies and, where feasible, seeks to mitigate risks to the FCA's statutory objectives
- b.** undertaking an annual assessment of the effectiveness of the risk management system
- c.** approving an appropriate statement on risk management in the annual report

## Board membership and other appointments

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**9.25** Subject to the statutory requirements for the composition of the Board of the FCA, make representations to the Treasury on the structure, size and composition of the Board following recommendations from the People Committee.

**9.26** Appointment of one of the non-executive members of the Board to be the Senior Independent Director.

**9.27** Appointment of the members and the chair of the following board committees:

- a.** Audit Committee
- b.** Risk Committee
- c.** Policy and Rules Committee
- d.** People Committee
- e.** Performance Committee
- f.** Oversight Committee
- g.** Regulatory Decisions Committee
- h.** Competition Decisions Panel
- i.** any other committees established by the Board from time to time

**9.28** Appointment or removal of the Company Secretary.

**9.29** Appointment or removal of employer-appointed directors, and of the Chair, of FCA Pension Plan Trustee Limited.

**9.30** Appointment or removal of the members and, with Treasury approval where required by statute, the Chair of the following bodies:

- a.** the FCA Practitioner Panel
- b.** the Smaller Business Practitioner Panel
- c.** the Markets Practitioner Panel
- d.** the Consumer Panel

e. the Listing Authority Advisory Panel

- 9.31** Maintenance of a public statement describing eligible practitioners which the Smaller Business Practitioner Panel will represent.
- 9.32** Appointment or removal of the members of the board and, with Treasury approval, the Chair of the Financial Ombudsman Service.
- 9.33** Appointment or removal of the members of the board and, with Treasury approval, the Chair and the Managing Director of the Payment Systems Regulator.
- 9.34** In agreement with the Prudential Regulation Authority, the appointment or removal of the members of the board and, with Treasury approval, the Chair and the Chief Executive of the Financial Services Compensation Scheme.
- 9.35** In agreement with the Prudential Regulation Authority and the Bank of England, and with Treasury approval, the appointment or removal of an independent person as 'investigator' to conduct investigations in line with the Complaints Scheme (the Complaints Commissioner).
- 9.36** Appointment of a 'Chief Prosecutor' and a 'Deputy Prosecutor' to exercise the FCA's powers under the Serious Organised Crime and Police Act 2005 (s.71(6a)) as amended by the Coroners and Justice Act 2009.

## Remuneration

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- 9.37** Approval of the remuneration policy of the organisation (with the exception of the remuneration policy for members of the Executive Committee which is delegated to the People Committee).
- 9.38** Approval of significant changes to the rules of the FCA Pension Plan subject to the powers vested in the principal employer under the Trust Deed and Rules.

## Corporate governance matters

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- 9.39** Establishing Board committees and approval of their terms of reference.
- 9.40** Undertaking a formal and rigorous annual review of the Board's own performance, that of its committees and individual directors.
- 9.41** Keeping under review the FCA's overall corporate governance arrangements.
- 9.42** Authorising conflicts of interest where permitted by the FCA's articles of association.

## Policies

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**9.43** Approval of the following policies:

- a.** Conflict of Interests Policy for FCA staff, non-executive directors, members of the Regulatory Decisions Committee and Competition Decisions Panel and members of panels appointed by the Board
- b.** Corporate Responsibility Policy
- c.** Health and Safety Policy
- d.** Communications Policy
- e.** Business Continuity Management Policy
- f.** Finance Policy
- g.** Procurement Policy

## Other

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**9.44** Approval of:

- a.** the annual budget of the Financial Ombudsman Service
- b.** the Financial Services Compensation Scheme's management expenses levy limit
- c.** the annual budget of the Payment Systems Regulator
- d.** the business plan of the Payment Systems Regulator

**9.45** Approval of the prosecution, defence and settlement of litigation, or an alternative dispute resolution mechanism, involving more than £2m or otherwise material to the interests of the FCA.

**9.46** Consideration of any novel or contentious matters which, in the opinion of a member of the Board or the Executive Committee, it would be appropriate for the Board to consider.

**9.47** Agreement, and annual review of the operation, of the Memorandum of Understanding between the FCA and the PRA.

**9.48** Appointment of a senior executive to be responsible for the quarterly review of the co-ordination between the FCA and the PRA as set out in the Memorandum of Understanding.

**9.49** Agreement, and annual review of the operation, of any Memorandum of Understanding which is required by statute between the FCA and any third parties.

**9.50** Agreement to investigate and report on possible regulatory failure under s. 73 Financial Services Act 2012.

**9.51** Agreement on how to carry out an investigation directed by the Treasury under s. 77 and s78 Financial Services Act 2012.

- 9.52** Provisional decision to make a market investigation reference to the Competition and Markets Authority under section 131 Enterprise Act 2002, to consult on that decision, and to decide to make such a reference.
- 9.53** Agreement of changes to the Articles of Association of the following bodies, as required by those Articles:
- a.** Financial Ombudsman Service
  - b.** Financial Services Compensation Scheme
  - c.** Payment Systems Regulator
- 9.54** Approval of this schedule of matters reserved to the Board for decision.

## Chapter 10

# Terms of Reference of FCA Committees

### 10.1 Terms of Reference of the Audit Committee

#### Purpose

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1. The Audit Committee (the Committee) is responsible for supporting the Board in meeting its responsibilities for an effective system of internal control and financial reporting.
2. The Committee shall have oversight of the group and, unless required otherwise by regulation, carry out the duties below for the FCA, the PSR and the group as a whole. References to the organisation in these terms of reference should be interpreted accordingly.
3. The Committee shall monitor and assess the role and effectiveness of Internal Audit in the overall context of the organisation's risk management system and the work of risk and compliance, finance and the external auditor in ensuring that the FCA achieves its statutory and operational objectives and Mission. This includes the effectiveness of the mitigation of harm and the safety and soundness of its own operations.
4. The Committee oversees the operation of the FCA's Complaints Scheme on behalf of the Board.
5. The Committee also provides assurance on any additional matters as instructed or delegated by the Board.

#### Duties

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##### Financial reporting

6. The Committee shall monitor the integrity of the organisation's financial statements, including its annual report and any other public statements relating to financial performance. It shall review and report to the Board on significant financial reporting matters, issues and judgements which those statements contain, having regard to the matters communicated to it by the National Audit Office (NAO).
7. In particular, the Committee shall review and challenge where necessary:
  - a. the application of significant accounting policies and any changes to them
  - b. the methods used to account for significant or unusual transactions where different approaches are possible

- c.** whether the organisation has adopted appropriate accounting standards and made appropriate estimates and judgements, taking into account the NAO's views on the financial statements
  - d.** all material information presented with the financial statements, including the strategic report and the corporate governance statements relating to the audit or to internal control
  - e.** the position in relation to the funding and investment strategy of the closed defined benefit section of the Pension Plan
  - f.** the consideration of any material environmental risks in the development of the organisation's financial statements
- 8.** Where the Committee is not satisfied with any aspect of the proposed financial reporting, it shall report its views to the Board.

### **Narrative reporting**

- 9.** The Committee shall review the content of the annual report and accounts and advise the Board on whether, taken as a whole, it is fair, balanced and understandable and provides the information necessary to assess the organisation's performance, business model and strategy and whether it informs the Board's statement in the annual report on these matters that is required under the UK Corporate Governance Code (the Code). This should include reviewing reporting on climate-related issues relevant to the FCA as a corporate entity.

### **Internal controls and risk management systems and policies**

- 10.** The Committee shall:
- a.** keep under review the organisation's internal financial controls systems that identify, assess, manage and monitor financial risks
  - b.** keep under review the organisations' governance and control framework in relation to the origination, procurement and implementation of contracts including, but not limited to, business technology contracts, ensuring environmental risks are considered as part of the framework
  - c.** keep under review other internal control and risk management systems
  - d.** review and approve the statements to be included in the annual report concerning internal control, risk management and the viability statement
  - e.** monitor and make recommendations to the Board on the organisation's financial policies
- 11.** In its evaluation of risk management systems, the Committee shall liaise with the Risk Committee and take account of its assessment.

### **Compliance, whistleblowing and fraud**

- 12.** The Committee shall review:

- a.** the adequacy, effectiveness and security of the organisation's internal whistleblowing arrangements for its employees and contractors to raise concerns, in confidence, about possible wrongdoing. The Committee shall ensure that these arrangements allow proportionate and independent investigation of such matters and appropriate follow up action the organisation's procedures for detecting fraud
- b.** the organisation's systems and controls for the prevention of bribery and corruption and receive reports on non-compliance
- c.** regular reports from the Money Laundering Reporting Officer and the adequacy and effectiveness of the organisation's anti-money laundering systems and controls
- d.** compliance activities and receive assurance of compliance against internal policies and standards

## Internal Audit

**13.** The Committee shall:

- a.** approve the appointment or termination of appointment of the Director of Internal Audit
- b.** review and approve the role and mandate of Internal Audit ensuring it is appropriate for the needs of the organisation
- c.** in close liaison with the Risk Committee, review and approve the internal audit universe and internal audit plan (including review of its annual budget) to ensure it is aligned to the key risks of the organisation. This will be done with reference to the annual risk and compliance operational and assurance plan.
- d.** receive regular reports on work carried out by Internal Audit
- e.** review the findings, recommendations and any other relevant reports of Internal Audit
- f.** review and monitor the executive's responsiveness to the findings and recommendations of Internal Audit

**14.** The Committee shall ensure that:

- a.** Internal Audit has unrestricted scope, the necessary resources and access to information to enable it to fulfil its mandate
- b.** there is open communication between different functions of the FCA and the PSR and that Internal Audit evaluates the effectiveness of these functions as part of its internal audit plan
- c.** Internal Audit is equipped to perform in line with appropriate professional standards for internal auditors
- d.** the Director of Internal Audit has direct access to the Chair of the FCA, the Chair of the PSR and the Chair of the Committee, providing independence from the executive and accountability to the Boards and the Committee

**15.** The Committee shall carry out an annual assessment of the effectiveness of Internal Audit and as part of this assessment shall:

- a.** meet the Director of Internal Audit, without the presence of the executive, to discuss the effectiveness of the Internal Audit function



- b.** review and assess progress to complete the annual internal audit work plan
- c.** determine whether it is satisfied that the quality, experience and expertise of Internal Audit is appropriate for the organisation
- d.** review the actions taken by the executive to implement the recommendations of Internal Audit and to support the effective working of the Internal Audit function
- e.** consider whether an independent, third-party review of processes is appropriate

## External Audit

- 16.** The Committee shall oversee the relationship with the NAO, including:
- a.** approving the NAO's remuneration, including both fees for audit and non-audit services, and ensuring that the level of fees is appropriate to enable an effective and high-quality audit to be conducted
  - b.** approving the NAO's terms of engagement, including any engagement letter issued at the start of each audit and the scope of the audit
- 17.** The Committee shall:
- a.** agree with the Board a policy on the employment of former employees of the NAO, taking into account the Ethical Standard and legal requirements, and monitor the application of this policy
  - b.** monitor the NAO's processes for maintaining independence, its compliance with relevant UK law, regulation, other professional requirements and the Ethical Standard, including guidance on the rotation of audit partner and staff
  - c.** monitor the level of fees paid to the NAO in the context of the relevant legal, professional and regulatory requirements, guidance and the Ethical Standard
- 18.** The Committee shall:
- a.** evaluate the risks to the quality and effectiveness of the financial reporting process in the light of the NAO's communications with the Committee
  - b.** meet regularly with the NAO (including once at the planning stage before the audit and once after the audit at the reporting stage) and, at least once a year, without the executive being present, to discuss the NAO's remit and any issues arising from the audit
  - c.** discuss with the NAO the factors that could affect audit quality and review and approve the annual audit plan, ensuring it is consistent with the scope of the audit engagement, having regard to the seniority, expertise and experience of the audit team
  - d.** review the findings of the audit with the NAO. This shall include, but not be limited to:
    - i.** a discussion of any major issues which arose during the audit
    - ii.** the NAO's explanation of how the risks to the audit quality were addressed
    - iii.** key accounting and audit judgments
    - iv.** the NAO's view of their interactions with senior executives
    - v.** levels of errors identified during the audit

- 19.** The Committee shall:
- a.** review any representation letters requested by the NAO before they are signed on behalf of the organisation
  - b.** review the management letter and the executive's response to the NAO's findings and recommendations
  - c.** review any other relevant reports by the NAO
- 20.** The Committee shall review the effectiveness of the external audit process, including an assessment of the quality of the audit, the handling of key judgements by the NAO and the NAO's response to questions from the Committee.
- 21.** The Committee shall seek to ensure co-ordination of the external audit with the activities of Internal Audit.

### **Complaints Scheme**

- 22.** The Committee shall:
- a.** monitor the effectiveness of the investigation of complaints against the organisations
  - b.** review the outcomes of upheld complaints and ensure the executive has appropriate processes in place to address the root causes of such complaints
  - c.** monitor the resources available to the organisations' complaints investigation function to ensure that they are capable of investigating complaints effectively

### **Chair's expenses**

- 23.** The Committee shall review the expenses incurred by the Chair of the organisation, by an annual summary, showing separately travel, entertainment and any other significant items of expense.

### **Regulatory Reviews**

- 24.** The Committee shall:
- a.** oversee the work done by Risk and Compliance Oversight (R&CO) in relation to reviews of the FCA's performance, including reviews required under sections 73 and 77 of the Financial Services Act 2012
  - b.** oversee the processes for taking decisions to commission independent reviewers to conduct reviews and for identifying potential independent reviewers for appointment by the Board
  - c.** make recommendations to the Board about these matters as and when appropriate.
- 25.** For these purposes, the Committee will receive reports from R&CO at least every 6 months.

## Potential implications of legal action

- 26.** The Committee shall make recommendations to the Board on the potential implications of any legal action taken against the organisation, based on litigation reports received from the General Counsel's Division and Human Resources Division.

## Reporting responsibilities

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- 27.** The Committee Chair shall report to the Board on the Committee's proceedings after each meeting.
- 28.** The Committee shall make whatever recommendations to the FCA and PSR Boards it deems appropriate on any area within its remit.
- 29.** The Chair of the Committee shall formally report annually to the FCA and PSR Boards how the Committee has discharged its responsibilities.
- 30.** The Committee shall prepare a report on its activities to be included in the organisation's Annual Report. The report should include:
- a.** an explanation of how the Committee has addressed the effectiveness of the external audit process
  - b.** the significant issues that the Committee considered in relation to the financial statements and how these issues were addressed, having regard to matters communicated to it by the NAO
  - c.** all other information requirements set out in the Code

## Membership and Committee Proceedings

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- 31.** The Committee shall comprise at least 3 members, one of whom must be the Chair of the Risk Committee.
- 32.** Members of the Committee shall be appointed by the Board in consultation with the Chair of the Audit Committee
- 33.** All members of the Committee shall be independent non-executive directors of either the FCA or the PSR, at least one of whom shall have recent and relevant financial experience and with competence in accounting and/or auditing. A majority of members will be FCA non-executive directors
- 34.** The Chair of the FCA or of the PSR shall not be a member of the Committee
- 35.** Only members of the Committee have the right to attend committee meetings. However, the following individuals will be invited to attend meetings on a regular basis:
- a.** Chair of the FCA
  - b.** Chair of the PSR (if different to (a))

- c.** Chief Executive of the FCA
  - d.** Chief Operating Officer of the FCA
  - e.** Director of Internal Audit
  - f.** Director of Risk & Compliance Oversight
  - g.** Director of Finance
  - h.** a representative of the NAO
  - i.** a representative of the PSR
- 36.** Other individuals may be invited by the Committee Chair to attend all or part of any meeting.
- 37.** The Board shall appoint the Chair of the Committee. In the absence of the Committee Chair at any meeting, the remaining members present shall elect one of themselves to chair the meeting.
- 38.** The Committee Chair shall meet at least quarterly with the Chair of the Risk Committee and the FCA/PSR Chair to ensure appropriate co-ordination and prioritisation of meeting agendas.

## Secretary

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- 39.** The Company Secretary, or their nominee, shall act as the Secretary of the Committee.

## Quorum

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- 40.** The quorum necessary for the transaction of business shall be 2 members.

## Frequency of meetings

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- 41.** The Committee shall meet at least 4 times a year at appropriate times in the financial reporting and audit cycle and otherwise as required.

## Notice and proceedings of meetings

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- 42.** Meetings of the Committee shall be called by the Secretary at the request of any of its members or at the request of the audit lead at the NAO or the Directors of Internal Audit, Risk and Compliance, or Finance respectively if they consider it necessary.
- 43.** Unless otherwise agreed, notice of each meeting confirming the venue, time and date together with an agenda of items to be discussed, shall be forwarded to each member of the Committee, and any other person required to attend, no later than 5 working days before the date of the meeting. Supporting papers shall be sent to Committee members and, as appropriate, other attendees at the same time.

44. The notices, agendas and supporting papers shall normally be distributed in electronic form.
45. Meetings may be held by telephone or other electronic means that allows those participating in the meeting to communicate with each other.

## Minutes of meetings

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46. The Secretary shall minute the proceedings and resolutions of all meetings of the Committee, including recording the names of those present and in attendance.
47. Minutes of meetings shall be agreed with the Chair of the Committee and presented for approval at a subsequent Committee meeting. Minutes will be made available to all members of the Board and other individuals unless it would be inappropriate to do so in the opinion of the Chair of the Committee.

## Annual Public Meeting

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48. The Chair of the Committee should attend the Annual Public Meeting prepared to respond to any questions on the activities of the Committee.

## Authority

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49. The Committee is authorised:
  - a. to seek any information it requires from any employee of the organisation to perform its duties
  - b. to obtain, at the organisation's expense, outside legal or other professional advice on any matter within its terms of reference
  - c. to request the attendance of any employee of the organisation at a meeting of the Committee as and when required
  - d. to publish in the Annual Report details of any issues that cannot be resolved between the Committee and the Board

## Other matters

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50. The Committee shall:
  - a. have access to sufficient resources to carry out its duties, including access to a Secretariat for help as required
  - b. be provided with appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members

- c.** give due consideration to relevant laws and regulations, the provisions of the Code and any other applicable rules, as appropriate
- d.** be responsible for co-ordination of the internal and external auditors
- e.** oversee any investigation of activities that are within its terms of reference
- f.** work and liaise as necessary with all other Board committees
- g.** Arrange for periodic review of its own performance and at least once a year review its terms of reference and recommend any changes it considers necessary to the Board

**51.** The Committee may hold private sessions as the Chair of the Committee deems appropriate.

## 10.2 Terms of Reference of the Risk Committee<sup>5</sup>

### Purpose

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1. The Risk Committee (the Committee) is responsible for:
  - a. supporting the Board in meeting its responsibilities for an effective system of risk management and appropriate assurance of the adequacy and effectiveness of the FCA's system of regulation (including policy, authorisation, supervision, enforcement, competition and associated support function activities)
  - b. ensuring that the FCA achieves its statutory and operational objectives and Mission, including the effectiveness of the mitigation of harm and the safety and soundness of its own operations
2. The Committee oversees the Regulatory Decisions Committee (RDC) on behalf of the Board.
3. The Committee also provides assurance on any additional matters as instructed or delegated by the Board.

### Duties

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#### Risk management oversight

4. The Committee shall advise and make recommendations to the Board on the FCA's:
  - a. risk strategy, with reference to, among other things, the sector views and strategies, portfolio strategies, first line performance reporting, enterprise-wide risk management reporting, and views of external stakeholders
  - b. risk tolerance framework
5. The Committee shall:
  - a. review and report to the Board on the adequacy and effectiveness of the FCA's risk management framework and processes that identify, assess, manage, mitigate, monitor and report risks, including long-term emerging risks
  - b. review and report to the Board on the adequacy and effectiveness, including timeliness and maturity, of the FCA's first- and second-line assurance frameworks and associated outputs
  - c. receive regular reports on the FCA's risk profile, covering strategic, risk of harm, conduct, financial, operational, execution and public confidence risks and seek assurance that the FCA's risk profile is consistent with ensuring the delivery of its objectives, including any recommendations from HM Government to the FCA

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<sup>5</sup> Approved by the Board on 27 July 2023.

about aspects of the government's economic policy to which the FCA should have regard

- d. seek assurance from the executive that the principal risks have been appropriately identified, assessed, prioritised and have appropriate mitigations in place to ensure they are managed within Board approved risk tolerance
  - e. monitor and make recommendations to the Board on the organisation's non-financial policies, including in relation to environmental, social and governance issues
6. The Committee shall review and approve the role and mandate of the risk management and compliance functions ensuring they are appropriate for the needs of the organisation. This includes reviewing and approving the annual risk and compliance operational and assurance plan. This will be done with reference to the annual internal audit plan.
7. The Committee shall:
- a. review the findings, recommendations and any other relevant reports of the Director of Risk and Compliance Oversight
  - b. review and monitor the executive's responsiveness to the findings and recommendations of the Director of Risk and Compliance Oversight
  - c. approve the Risk Management Framework
  - d. review and assess progress to complete the annual risk and compliance operational and assurance plan
  - e. ensure the Director of Risk and Compliance Oversight has direct access to the Chair of the FCA and the Chair of the Committee, providing independence from the executive and accountability to the Board and the Committee
  - f. The Committee will, as a result of its review work, refer any areas of material concern to the Board or relevant Board committee for their consideration.

## Regulatory Decisions Committee

8. The Committee shall receive reports from the Chair of the RDC on the operation, resourcing and effectiveness of the RDC and make recommendations to the Board as appropriate.

## Reporting responsibilities

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9. The Committee Chair shall report to the Board on the Committee's proceedings after each meeting.
10. The Committee shall make whatever recommendations to the Board it deems appropriate on any area within its remit.
11. The Chair of the Committee shall formally report annually to the Board how the Committee has discharged its responsibilities.



12. The Committee shall prepare a report on its activities and the FCA's risk management and strategy to be included in the Annual Report of the FCA.

## Membership and Committee Proceedings

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13. The Committee shall comprise at least 3 members, one of whom must be the Chair of the Audit Committee.
14. Members of the Committee shall be appointed by the Board in consultation with the Committee Chair.
15. All members of the Committee shall be independent non-executive directors.
16. The Chair of the FCA shall not be a member of the Committee.
17. Only members of the Committee have the right to attend committee meetings. However, the following individuals will be invited to attend meetings on a regular basis:
  - a. the Chair of the FCA
  - b. the Chief Executive
  - c. the Chief Operating Officer
  - d. the Executive Director of Risk & Compliance Oversight
  - e. the Director of Internal Audit
18. Other individuals may be invited by the Committee Chair to attend all or part of any meeting.
19. The Board shall appoint the Chair of the Committee. In the absence of the Committee Chair at any meeting, the remaining members present shall elect one of themselves to chair the meeting.
20. The Committee Chair shall meet at least quarterly with the Chair of the Audit Committee and the FCA Chair to ensure appropriate co-ordination and prioritisation of meeting agendas.

## Secretary

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21. The Company Secretary, or their nominee, shall act as the Secretary of the Committee.

## Quorum

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22. The quorum necessary for the transaction of business shall be 2 members.

## Frequency of meetings

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- 23.** The Committee shall meet at least 4 times a year at appropriate times to coincide with key dates in the risk review process and otherwise as required.

## Notice and proceedings of meetings

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- 24.** Meetings of the Committee shall be called by the Secretary at the request of any of its members or at the request of the Executive Director of Risk & Compliance Oversight if they consider it necessary.
- 25.** Unless otherwise agreed, notice of each meeting confirming the venue, time and date, together with an agenda of items to be discussed, shall be forwarded to each member of the Committee and any other person required to attend no later than 5 working days before the date of the meeting. Supporting papers shall be sent to Committee members and, as appropriate, to other attendees at the same time.
- 26.** The notice, agendas and supporting papers shall normally be distributed in electronic form.
- 27.** Meetings may be held by telephone or other electronic means that allows those participating in the meeting to communicate with each other.

## Minutes of meetings

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- 28.** The Secretary shall minute the proceedings and resolutions of all meetings of the Committee, including recording the names of those present and in attendance.
- 29.** Minutes of meetings shall be agreed with the Chair of the Committee and presented for approval at a subsequent Committee meeting. Minutes will be made available to all members of the Board and other individuals unless it would be inappropriate to do so in the opinion of the Chair of the Committee.

## Annual Public Meeting

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- 30.** The Chair of the Committee should attend the Annual Public Meeting prepared to respond to any questions on the activities of the Committee.

## Authority

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- 31.** The Committee is authorised:

- a.** to seek information it requires from any employee of the organisation to perform its duties
- b.** to obtain, at the organisation's expense, outside legal or other professional advice on any matter within its terms of reference
- c.** to request the attendance of any employee of the organisation at a meeting of the Committee as and when required
- d.** to publish in the Annual Report details of any issues that cannot be resolved between the Committee and the Board

## Other matters

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- 32.** The Committee shall:
  - a.** have access to sufficient resources to carry out its duties, including access to a Secretariat for help as required
  - b.** be provided with appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members
  - c.** oversee any investigation of activities that are within its terms of reference
  - d.** work and liaise as necessary with all other Board committees
  - e.** arrange for periodic review of its own performance and at least once a year review its terms of reference and recommend any changes it considers necessary to the Board
  
- 33.** The Committee may hold private sessions as the Chair of the Committee deems appropriate.

## 10.3 Terms of Reference of the Policy and Rules Committee

### Purpose

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1. The Policy and Rules Committee is responsible for supporting the Board in meeting its responsibilities when exercising its legislative functions to make policy and rules under FSMA (2000) Sch 1ZA Part 1 Paragraph 8 and in determining the general policy and principles by reference to which the FCA performs a particular legislative function.
2. The Committee scrutinises proposals for new policy and rules and changes to existing policy and rules.
3. It makes recommendations to the Board regarding the adoption of policy and rules, considering their likely effectiveness in furthering the FCA's statutory and operational objectives and, where relevant, other "have-regards", taking into account the principles of good regulation.

### Duties

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4. The Committee shall:
  - a. agree to the touchpoints of proposed rule-making and policy changes with the Committee, Board, Statutory Panels and other non-executive Committees as necessary, considering the likely complexity and impact of proposed policy changes
  - b. scrutinise and challenge proposals to introduce and change policy and rules, considering:
    - i. their likely effectiveness in furthering the FCA's strategic and operational objectives, including, but not limited to, their ability to be effectively supervised by the FCA
    - ii. the ability for their impact in furthering the FCA's strategic and operational objectives to be evaluated
    - iii. the coherence of the overall policy framework
    - iv. the costs and benefits of policy changes, including their implications for FCA resources
    - v. any other factors the Committee deems necessary.
  - c. be consulted at a sufficiently early stage to be able to scrutinise proposals and make recommendations prior to consultation in order to ensure an efficient use of resources in the formulation of policy proposals
  - d. oversee formal evaluations of policy initiatives and make recommendations where relevant

## Reporting responsibilities

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5. The Committee Chair shall report to the Board on the Committee's proceedings after each meeting.
6. The Committee shall make whatever recommendations to the FCA Board it deems appropriate on any area within its remit.
7. The Chair of the Committee shall formally report annually to the FCA Board on how the Committee has discharged its responsibilities.
8. The Committee shall prepare a report on its activities to be included in the organisation's Annual Report.

## Membership and Committee Proceedings

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9. The Committee shall comprise at least 3 members.
10. Members of the Committee shall be appointed by the Board.
11. All members of the Committee shall be independent non-executive directors of the FCA and the CEO of the FCA or their delegate.
12. Only members of the Committee have the right to attend committee meetings. However, the following individuals will be invited to attend meetings on a regular basis:
  - a. Chair of the FCA (if not a member of the committee)
  - b. The General Counsel
  - c. The Chair of the Executive Regulation and Policy Committee
  - d. The Chief Economist
  - e. Senior advisors appointed to advise the Committee by the CEO of the FCA.
13. Other individuals may be invited by the Committee Chair to attend all or part of any meeting.
14. The Board shall appoint the Chair of the Committee. In the absence of the Committee Chair at any meeting, the remaining members present shall elect one of themselves to chair the meeting.

## Secretary

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15. The Company Secretary, or their nominee, shall act as the Secretary of the Committee.

## Quorum

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16. The quorum necessary for the transaction of business shall be 2 members.

## Frequency of meetings

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17. The Committee shall meet sufficiently frequently to carry out its role and purpose.

## Notice and proceedings of meetings

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18. Meetings of the Committee shall be called by the Secretary at the request of any of its members.
19. Unless otherwise agreed, notice of each meeting confirming the venue, time and date together with an agenda of items to be discussed, shall be forwarded to each member of the Committee, and any other person required to attend, no later than 5 working days before the date of the meeting. Supporting papers shall be sent to Committee members and, as appropriate, other attendees at the same time.
20. The notices, agendas and supporting papers shall normally be distributed in electronic form.
21. Meetings may be held by telephone or other electronic means that allows those participating in the meeting to communicate with each other.

## Minutes of meetings

---

22. The Secretary shall minute the proceedings and resolutions of all meetings of the Committee, including recording the names of those present and in attendance.
23. Minutes of meetings shall be agreed with the Chair of the Committee and presented for approval at a subsequent Committee meeting. Minutes will be made available to all members of the Board and other individuals unless it would be inappropriate to do so in the opinion of the Chair of the Committee.

## Authority

---

24. The Committee is authorised:
- a. to seek any information it requires from any employee of the organisation to perform its duties
  - b. to obtain, at the organisation's expense, outside legal or other professional advice on any matter within its terms of reference

- c.** to request the attendance of any employee of the organisation at a meeting of the Committee as and when required
- d.** to publish in the Annual Report details of any issues that cannot be resolved between the Committee and the Board

## Other matters

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- 25.** The Committee shall:
- a.** have access to sufficient resources to carry out its duties, including access to a Secretariat for help as required
  - b.** be provided with appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members
  - c.** give due consideration to relevant laws and regulations, the provisions of the Code and any other applicable rules, as appropriate
  - d.** work and liaise as necessary with all other Board committees
  - e.** arrange for periodic review of its own performance and at least once a year review its terms of reference and recommend any changes it considers necessary to the Board
- 26.** The Committee may hold private sessions as the Chair of the Committee deems appropriate.

## 10.4 Terms of Reference of the People Committee

### Purpose

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1. The role of the People Committee (the Committee) is to approve, oversee and review the FCA's people strategy.
2. The FCA's people strategy is its strategy for ensuring that the FCA has a workforce which can sustainably deliver the FCA's Strategy in line with the FCA's values and within its budget. It comprises its culture, employment framework, its approach to appointments and organisational leadership, and its processes for engagement with its workforce.

### Duties

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#### General

3. The Committee shall carry out the duties below:
  - a. review the FCA's culture, make recommendations to the Board, and ensure that it is embedded in the FCA's people strategy.
  - b. review and approve the FCA's employment framework, which includes policies on all aspects of remuneration, performance and reward, pension offering, and its application of the Senior Managers and Certification Regime (SMCR) to itself. The framework includes, but is not limited to, broader people-related matters such as organisational capability, diversity, inclusion and talent. The objective of the employment framework and associated policies is:
    - i. to ensure that the FCA's employees are provided with appropriate incentives to encourage enhanced performance and are, in a fair and responsible manner, rewarded for their contribution to the success of the FCA; and
    - ii. to ensure the FCA has at all times a workforce capable of carrying out its Strategic Plan and Business plan within an appropriate level of risk.
  - c. monitor the application of the employment framework to ensure it is transparent, fair and consistent across the FCA.
  - d. monitor risks to the FCA arising out of the application of the employment framework and communicate these to the Risk Committee as appropriate.
  - e. oversee and review the FCA's policies and processes for engagement with its workforce.

#### Remuneration policy

4. In relation to the remuneration policy, the Committee shall:



- a.** have delegated responsibility for determining the remuneration policy for members of the Executive Committee in accordance with the Principles and Provisions of the UK Corporate Governance Code (the Code).
- b.** design remuneration policies and practices to support strategy and promote long-term sustainable success, with Executive remuneration aligned to the FCA's purpose and values, clearly linked to the successful delivery of the FCA's long-term strategy, and that enable the use of discretion to override formulaic outcomes and to recover and/or withhold sums under appropriate specified circumstances.
- c.** when determining the remuneration policy and practices for members of the Executive Committee, consider the Code requirements for clarity, simplicity, risk mitigation, predictability, proportionality and alignment to culture.
- d.** in determining remuneration policy, take into account all other factors which it deems necessary including relevant legal and regulatory requirements, the provisions and recommendations of the Code and associated guidance. The objective of such policy shall be to attract, retain and motivate management of the quality required to run the FCA successfully without paying more than is necessary, having regard to views of stakeholders.
- e.** approve the FCA's redundancy policy.
- f.** approve the policy covering the involvement of the Chair and Chief Executive in relation to the treatment of fees arising from any outside appointment offered to them.
- g.** approve the policy for authorising claims for expenses for the Chief Executive and the Chair.
- h.** make recommendations to the Board on the appropriate level of remuneration for non-Executive Directors.

## Executive remuneration

- 5.** In relation to Executive remuneration, the Committee shall:
- a.** have delegated responsibility for determining, in consultation with the Chair or Chief Executive as appropriate, the remuneration of each member of the Executive Committee, including any pay in relation to performance against objectives and any benefits and pensions rights.
  - b.** review the Executive's recommendations for the annual budget for remuneration.
  - c.** approve compensation packages or arrangements following the severance of the service contract applicable to a member of the Executive Committee [and any other executive falling within the scope of the Senior Managers Regime in any amount].

## The Board

- 6.** In relation to the Board, the Committee shall:
- a.** ensure, in consultation with the Treasury, that appropriate succession arrangements are in place for the roles of Chair and Chief Executive.

- b. ensure that a formal evaluation of the performance of the Chair is conducted annually by the Senior Independent Director and that a formal evaluation of the performance of each of the non-executive directors is conducted annually by the Chair.
  - c. attend to any matters relating to the continuation in office of any director at any time including the suspension or termination of service of an executive director as an employee of the company subject to the provisions of the law and their service contract.
  - d. make recommendations with regard to the structure, size and composition of the Board and its Committees, taking account of the skills, knowledge, experience and diversity of the Board, its Committees, and the organisation's strategy. This should include ensuring sufficient capability to consider recommendations from HM Government to the FCA about aspects of the government's economic policy to which the FCA should have regard.
7. The Committee shall make recommendations to the Chair in relation to the appointment of the Senior Independent Director and the responsibilities of the role.

### Executive Leadership

8. In relation to the executive leadership of the organisation, the Committee shall:
- a. keep under review the leadership needs of the FCA with a view to ensuring the continued ability of the organisation to execute its strategy and achieve its objectives.
  - b. ensure, in consultation with the Chief Executive, that appropriate succession arrangements are in place for members of the Executive Committee.
  - c. approve the appointment of members of the Executive Committee.
  - d. set the performance objectives of the Chief Executive, ensuring there is appropriate consideration of environmental outcomes and metrics as part of this process.

### Other Bodies

9. In relation to the remuneration arrangements of other bodies, the Committee shall:
- a. approve at least annually the remuneration of the board directors of the following bodies:
    - i. Financial Ombudsman Service
    - ii. Financial Services Compensation Scheme
    - iii. PSR (save in respect of any FCA employee serving as a member of the PSR Board. The remuneration of the Managing Director of the PSR is to be approved by the Committee following advice as to their performance given by the PSR Chair).
  - b. approve at least annually the remuneration of the chair and members of the following bodies:

- i.** the Consumer Panel
  - ii.** the Smaller Business Practitioner Panel
  - iii.** the Regulatory Decisions Committee
  - iv.** the Competition Decisions Committee
  - v.** FCA Pension Plan Trustee Ltd.
- c.** The Committee shall do such other things as it considers necessary for its role and such other matters as the Board may require in relation to its role, from time to time.

## Reporting responsibilities

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- 10.** The Chair of the Committee shall report to the Board on its proceedings after each meeting on the nature and content of its discussion, recommendations, approvals given, and actions to be taken.
- 11.** The Committee shall make whatever recommendations to the Board it deems appropriate on any area within its remit where action or improvement is needed.
- 12.** The Committee shall produce a report to be included in the FCA's annual report including:
  - a.** a description of its work in line with the requirements of the Code.
  - b.** a report on the directors' remuneration policy and practices
  - c.** the process used in relation to appointments, its approach to succession planning and how both support the development of a diverse pipeline
  - d.** how board evaluation has been conducted, the nature and extent of an external evaluator's contact with the board and individual directors, the outcomes and actions taken, and how it has influenced or will influence board composition
  - e.** the policy on diversity and inclusion, its objectives and linkage to the FCA's strategy, how it has been implemented and progress on achieving the objectives
  - f.** information on appropriate diversity characteristics of those in the senior management team and otherwise within the FCA
  - g.** identifying any external remuneration consultancy that has been engaged, alongside a statement about any other connection it has with the FCA or individual directors.

## Annual Public Meeting

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- 13.** The Chair of the Committee should attend the Annual Public Meeting prepared to respond to any stakeholder questions on the Committee's activities.

## Membership

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- 14.** The Committee shall comprise at least four members, all of whom shall be independent non-Executive Directors and may include the Chair (if independent).

## Members of the Committee shall be appointed by the Board

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- 15.** Only members of the Committee have the right to attend committee meetings. The Chair of the PSR, if not a member, shall also be invited to attend meetings as an observer. Other individuals such as the Chief Executive, the Chief People Officer and external advisers may be invited to attend for all or part of any meeting, as and when appropriate.
- 16.** The Board shall appoint the Chair of the Committee. In the absence of the Chair of the Committee the members present shall elect one of themselves to chair the meeting.

## Secretary

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- 17.** The Company Secretary, or their nominee, shall act as the Secretary of the Committee.

## Quorum

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- 18.** The quorum necessary for the transaction of the business of the Committee shall be three members.

## Frequency of meetings

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- 19.** The Committee shall meet at least four times a year and otherwise as required.

## Notice of meetings

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- 20.** Meetings of the Committee shall be convened by the Secretary of the Committee at the request of any of its members.
- 21.** Unless otherwise agreed, notice of each meeting confirming the venue, time and date, together with an agenda of items to be discussed and supporting papers, shall be forwarded to each member of the Committee and any other person required to attend no later to allow five full clear working days before the date of the meeting.
- 22.** Notice, agendas and supporting papers may be sent in electronic form.

- 23.** Meetings may also be held by any electronic means such as telephone or videoconference that allows all members and attendees to hear all the proceedings of the meeting.

## Minutes of meetings

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- 24.** The Secretary shall minute the proceedings and decisions of all meetings of the Committee, including recording the names of those present and in attendance.
- 25.** The Secretary shall ascertain, at the beginning of each meeting, the existence of any conflicts of interests, advise on how to manage them and minute the outcome accordingly.
- 26.** Draft minutes of meetings of the Committee shall be agreed promptly with the Chair of the Committee and circulated promptly thereafter to all members of the Committee. Once approved, the minutes should be circulated to all members of the Board unless, exceptionally, it would be inappropriate to do so in the opinion of the Chair of the Committee. The approved minutes may also be circulated to other relevant persons with the approval of the Chair of the Committee.

## Authority

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- 27.** The Committee is authorised to:
- a.** seek any information it requires from any FCA employee, and call any employee to attend a meeting of the Committee, in order to perform its duties
  - b.** obtain, at the FCA's expense, remuneration consultancy, legal, accounting or other professional advice on any matter within its terms of reference
  - c.** commission or purchase, at the FCA's expense, any reports, surveys or information which it deems necessary.

## Other matters

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- 28.** The Committee shall:
- a.** have access to sufficient resources in order to carry out its duties, including access to the Central Secretariat for advice and assistance as required
  - b.** be provided with appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members
  - c.** give due consideration to all relevant laws and regulations, the provisions of the UK Corporate Governance Code and associated guidance and any other applicable rules or codes of practice, as appropriate
  - d.** ensure that a periodic evaluation of its own performance is carried out

- e.** review its terms of reference at least annually, or as otherwise required by the Board, and recommend any changes it considers necessary to the Board for approval
- f.** work and liaise as necessary with other Board committees, ensuring the interaction between committees and with the Board is reviewed regularly.

## 10.5 Terms of Reference of the Performance Committee<sup>6</sup>

### Purpose

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1. The Performance Committee (the Committee) is an advisory committee of the Board and supports the Board in meeting its responsibilities for an effective system of managing the performance of the FCA against its strategy and associated plans.

### Duties

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2. The principal duties of the Committee shall be to provide assurance and make recommendations to the Board about:

### Financial Performance

- a. progress against the budget, including actual spend to date, forecast for the remainder of the financial year, and value for money
- b. financial decisions which fall within the Matters Reserved to the Board, unless scheduling of the committee prevents this.

### Operational Performance

- c. the FCA's operational performance against its Strategy, commitments and statutory duties, by reviewing and challenging management and other information relating to:
  - each of the FCA's divisions
  - the project portfolio, including RAG status, change requests agreed, new projects started and any material deviation from plans
  - operational hotspots and/or areas of concern, including remediation plans
  - reprioritisation decisions made by the Executive
3. The Committee will also provide assurance on any additional matters as instructed or delegated by the Board.
4. The Committee will, as a result of its review work, refer any areas of material concern to the Board or relevant Board committee for their consideration.

### Reporting responsibilities

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5. The Committee Chair shall report to the Board on the Committee's proceedings after each meeting.

<sup>6</sup> Approved by the Board on 27 July 2023.

6. The Committee shall make whatever recommendations to the Board it deems appropriate on any area within its remit.
7. The Chair of the Committee shall formally report annually to the Board how the Committee has discharged its responsibilities.
8. The Committee shall prepare a report on its activities to be included in the Annual Report of the FCA.

## Membership and Committee Proceedings

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9. The Committee shall comprise at least 3 members.
10. Members of the Committee shall be appointed by the Board in consultation with the Committee Chair.
11. All members of the Committee shall be independent non-executive directors.
12. Only members of the Committee have the right to attend committee meetings. However, the following individuals will be invited to attend meetings on a regular basis:
  - a. the Chief Operating Officer
  - b. the Executive Director of Risk & Compliance
13. Other individuals may be invited by the Committee Chair to attend all or part of any meeting.
14. The Board shall appoint the Chair of the Committee. In the absence of the Committee Chair at any meeting, the remaining members present shall elect one of themselves to chair the meeting.
15. The Committee Chair shall meet at least quarterly with the FCA Chair and Chairs of other Board committees to ensure appropriate co-ordination and prioritisation of meeting agendas.

## Secretary

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16. The Company Secretary, or their nominee, shall act as the Secretary of the Committee.

## Quorum

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17. The quorum necessary for the transaction of business shall be 2 members.



## Frequency of meetings

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18. The Committee shall meet at least 4 times a year at appropriate times as required.

## Notice and proceedings of meetings

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19. Meetings of the Committee shall be called by the Secretary at the request of any of its members or at the request of the Chief Operating Officer or the Executive Director of Risk & Compliance if they consider it necessary.
20. Unless otherwise agreed, notice of each meeting confirming the venue, time and date, together with an agenda of items to be discussed, shall be forwarded to each member of the Committee and any other person required to attend no later than 5 working days before the date of the meeting. Supporting papers shall be sent to Committee members and, as appropriate, to other attendees at the same time.
21. The notice, agendas and supporting papers shall normally be distributed in electronic form.
22. Meetings may be held by telephone or other electronic means that allows those participating in the meeting to communicate with each other.

## Minutes of meetings

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23. The Secretary shall minute the proceedings and resolutions of all meetings of the Committee, including recording the names of those present and in attendance.
24. Minutes of meetings shall be agreed with the Chair of the Committee and presented for approval at a subsequent Committee meeting. Minutes will be made available to all members of the Board and other individuals unless it would be inappropriate to do so in the opinion of the Chair of the Committee.

## Annual Public Meeting

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25. The Chair of the Committee should attend the Annual Public Meeting prepared to respond to any questions on the activities of the Committee.

## Authority

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26. The Committee is authorised:
- a. to seek information it requires from any employee of the organisation to perform its duties

- b.** to obtain, at the organisation's expense, outside legal or other professional advice on any matter within its terms of reference
- c.** to request the attendance of any employee of the organisation at a meeting of the Committee as and when required
- d.** to publish in the Annual Report details of any issues that cannot be resolved between the Committee and the Board

## Other matters

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- 27.** The Committee shall:
- a.** have access to sufficient resources to carry out its duties, including access to a Secretariat for help as required
  - b.** be provided with appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members
  - c.** oversee any investigation of activities that are within its terms of reference
  - d.** work and liaise as necessary with all other Board committees
  - e.** arrange for periodic review of its own performance and at least once a year review its terms of reference and recommend any changes it considers necessary to the Board
- 28.** The Committee may hold private sessions as the Chair of the Committee deems appropriate.

## 10.6 Terms of Reference of the Oversight Committee<sup>7</sup>

### Purpose

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1. The Oversight Committee (the Committee) provides support and advice to the Board on its relationships with the Financial Ombudsman Service (FOS), Financial Services Compensation Scheme (FSCS) and Payment Systems Regulator (PSR) in regard to the FCA's obligations in respect of each, including its statutory duties set out in the Financial Services and Markets Act (FSMA) and the Financial Services (Banking Reform) Act (FSBRA).
2. For the avoidance of doubt, the activities of the Oversight Committee do not affect the responsibilities of the Boards of the FOS, FSCS and PSR in relation to their respective organisations.

### Duties

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3. The principal duties of the Committee shall be to provide advice and support to the Board in relation to:
  - a. the FCA's duty to take such steps as are necessary to ensure that each of the FOS and FSCS are capable of exercising their functions under FSMA, and that the PSR is capable of exercising its functions under FSBRA; and
  - b. in respect of the FOS, whether it meets – and continues to meet – the quality requirements in Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015/542.
4. The Committee's specific duties in respect of each of the FOS, FSCS and PSR respectively are listed below:

### Financial Ombudsman Service

- a. Review and challenge the basis of preparation, underlying assumptions and predicted outcome of the Annual Budget of the FOS.
- b. Recommend to the Board whether it should approve the FOS Annual Budget.
- c. Review the information the FOS must provide every two years under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015/542 (the 'Regulations') and recommend to the Board whether it should decide the FOS still meets the requirements to be an ADR entity under the Regulations.
- d. Provide such other advice and support to the Board as may be required to assist it in satisfying its legal obligations, and exercising its powers, in relation to the FOS.

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<sup>7</sup> Approved by the Board on 29 June 2023.

## Financial Services Compensation Scheme

- e. Review and challenge the basis of the preparation, underlying assumptions and predicted outcomes of the management expenses budget of the FSCS.
- f. Recommend to the Board the amount at which the management expenses levy limit of the FSCS should be fixed.
- g. Provide such other advice and support to the FCA Board as may be required to assist it in satisfying its legal obligations, and exercising its powers, in relation to the FSCS.

## Payment Systems Regulator

- h. Advise the FCA Board regarding:
  - approval of the PSR's annual budget and annual plan and any variations to the budget or plan
  - the making of rules requiring participants in regulated payment systems to pay the FCA for relevant costs
  - the PSR's annual report in relation to the discharge of its duties
  - appointment of PSR Board members
- i. Provide such other advice and support to the Board as may be required to assist it in satisfying its legal obligations, and exercising its powers, in relation to the PSR.

## Reporting responsibilities

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- 5. The Committee Chair, or their nominee, shall report to the Board on its proceedings after each meeting.
- 6. The Committee shall make whatever recommendations to the Board it deems appropriate on any area within its remit where action or improvement is needed.
- 7. The Committee shall compile a report on its activities to be included in the organisation's Annual Report.

## Membership and Committee Proceedings

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- 8. The Committee shall comprise at least four members, the majority of whom shall be members of the Board. The Chief Executive or his nominee shall be a member of the Committee.
- 9. Members of the Committee shall be appointed by the Board, on the recommendation of the People Committee.
- 10. Only members of the Committee have the right to attend committee meetings.

11. Other individuals may be invited, by the committee Chair, to attend all or part of any meeting as and when appropriate.
12. The Board shall appoint the Committee Chair. In the absence of the Committee Chair the remaining members present shall elect one of themselves to chair the meeting.
13. Committee members should declare any interests in the matters to be discussed in accordance with the codes of conduct for staff and non-executive directors.

## Secretary

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14. Company Secretary, or their nominee, shall act as the Secretary of the Committee (the Secretary).

## Quorum

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15. The quorum necessary for the transaction of business shall be two members.

## Frequency of meetings

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16. The Committee shall meet as regularly as required to discharge its duties.
17. These meetings will be scheduled as far in advance as possible.

## Notice of and proceedings of meetings

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18. Meetings of the Committee shall be convened by the Secretary at the request of any of its members.
19. Unless otherwise agreed, notice of each meeting confirming the venue, time and date together with an agenda of items to be discussed, shall be forwarded to each member of the Committee and any other person required to attend, no later than five working days before the date of the meeting. Supporting papers shall be sent to the Committee members and to other attendees as appropriate, at the same time.
20. Notice, agendas and supporting papers shall normally be sent in electronic form where the recipient has agreed to receive documents in such a way.
21. Meetings may also be held by telephone or electronically.

## Minutes of meetings

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- 22.** The Secretary shall minute the proceedings and resolutions of all meetings of the Committee, including recording the names of those present and in attendance.
- 23.** The Secretary shall ascertain, at the beginning of each meeting, the existence of any interests in the matters to be discussed, advise on how to manage them and minute the outcome accordingly.
- 24.** Draft minutes of Committee meetings shall be agreed with the committee Chair and circulated promptly to all committee members and other individuals unless it would be inappropriate to do so in the opinion of the committee Chair.

## Annual Public Meeting

---

- 25.** The Committee Chair, or their nominee, shall attend the Annual Public Meeting prepared to respond to any stakeholder questions on the committee's activities.

## Authority

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- 26.** The Committee is authorised:
  - a.** to seek any information it requires from any employee to perform its duties
  - b.** to obtain, at the organisation's expense, outside legal or other professional advice on any matter within its terms of reference
  - c.** to request the attendance of any employee at a meeting of the committee as and when required.
  - d.** to publish in the Annual Report, details of any issues that cannot be resolved between the Committee and the Board.

## Other matters

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- 27.** The Committee shall:
  - a.** have access to sufficient resources to carry out its duties, including access to the Board Secretariat for assistance as required
  - b.** be provided with appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members
  - c.** oversee any investigation of activities that are within its terms of reference
  - d.** work and liaise as necessary with all other Board committees
  - e.** arrange for periodic review of its own performance and at least once a year review its terms of reference and recommend any changes it considers necessary to the Board for approval
  - f.** have a private session to discuss committee matters as and when required.

## 10.7 Terms of Reference of the Regulatory Decisions Committee

### Background and purpose

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1. The Regulatory Decisions Committee (RDC) is a committee of the FCA Board that exercises certain regulatory powers on behalf of the FCA, including in relation to the giving of supervisory notices, warning notices and decision notices. Annexes 1 and 2 of the Decision Procedure and Penalties manual (DEPP) set out a list of actions that the FCA may take under the Financial Services and Markets Act 2000 (FSMA) and other legislation which require a statutory notice to be given, and specify those for which the RDC is the relevant decision-maker.
2. The primary purpose of the RDC is to advance the fairness of the FCA's enforcement process by ensuring, in certain contested cases, separation between those who conduct investigations and those who decide whether a statutory notice should be given. To this end:
  - a. The RDC is separate from the FCA's executive management structure. It comprises a Chair appointed by the Board, who is an employee of the FCA, and other members appointed by the Board who are not employees of the FCA, including one or more Deputy Chairs
  - b. All members of the RDC are appointed for fixed periods. The Board may remove a member of the RDC, but only in the event of that member's misconduct or incapacity
  - c. The RDC has its own legal advisers and support staff (the Secretariat), who are separate from the FCA staff involved in conducting investigations and making recommendations to the RDC
  - d. The RDC is not involved in deciding which cases to investigate and only becomes involved in a case after the relevant division of the FCA has concluded that it is appropriate for the FCA to use certain regulatory powers against a firm or individual and makes a recommendation to the RDC.
3. The RDC is accountable to the Board, through RiskCo, in respect of its procedures, policies, operational arrangements and decisions generally, but this does not affect its independence in relation to its individual decisions.

### Functions

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4. The RDC's functions are:
  - a. To consider whether the material on which a recommendation is based is adequate to support it and whether the action recommended is appropriate in all the circumstances
  - b. To consider any representations made (whether written, oral or both) and any comments made by FCA staff or others in respect of those representations.

- c.** To decide whether to give statutory and other notices in cases which are described as within its scope by the Handbook or any regulatory guide, including in particular DEPP and the Enforcement Guide (EG), and the terms of any notice given
  - d.** To take any other decisions which are described as within its scope by the Handbook or any regulatory guide
  - e.** To take decisions associated with the matters which are within its scope.
- 5.** In addition, DEPP and EG provide that certain decisions will or may be taken by the RDC Chair or a Deputy Chair. Further, the RDC Chair or a Deputy Chair may, on behalf of the RDC, take the decisions associated with the matters which are within the RDC's scope.

## Operation of the RDC

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- 6.** The RDC will operate in accordance with chapter 3 of DEPP. In particular, DEPP 3.2 provides details in respect of the following matters:
  - a.** RDC meetings and composition of panels
  - b.** Conflicts of interest
  - c.** The RDC's general procedure
  - d.** The RDC's procedure in relation to warning notices and supervisory notices
  - e.** The RDC's procedure in relation to representations
  - f.** The RDC's procedure in relation to decision notices and second supervisory notices.
- 7.** The RDC may determine its own procedures where they are not specified in DEPP.

## Notice of meetings

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- 8.** The Secretariat shall make the arrangements for each meeting, including confirming the availability of each relevant RDC member.

## Records of decisions

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- 9.** The Secretariat will make and retain appropriate records of the decisions taken by the RDC.

## Reporting responsibilities

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- 10.** The Chair of the RDC will report on a quarterly basis to RiskCo and at least annually to the Board.



## Resources

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- 11.** The RDC shall have access to sufficient resources in order to carry out its duties, including, in particular, the resources of the Secretariat.
- 12.** The RDC may require any employee of the FCA to attend one or more of its meetings.

## Review

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- 13.** The RDC shall, at least once a year, review its own performance and terms of reference and recommend any changes it considers necessary to the Board for approval.
- 14.** The RDC shall, each year, produce an Annual Review, to be published alongside the FCA's Annual Report.
- 15.** The RDC shall also, each year, review the FCA's enforcement settlement process, and publish any recommendations arising out of its review in its Annual Review.

## 10.8 Terms of Reference of the Competition Decisions Committee

### Background and purpose

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1. The Competition Act 1998 (Competition and Markets Authority's Rules) Order 2014 (CMA Rules)<sup>8</sup> requires separation between (a) the person(s) who oversees an investigation and decides to issue a notice setting out a proposed finding of infringement of the Competition Act 1998 (CA98) (i.e. the Statement of Objections) and (b) the person who decides whether any supplementary Statement of Objections- is required, whether there has in fact been such an infringement and whether to impose a penalty under the CMA Rules.<sup>9</sup> It also requires that the person in (b) comprises at least two persons.
2. To meet the requirement of separation of decision-making, the Board of the Financial Conduct Authority (FCA) has authorised a pool of persons (CDC Panel) who can be appointed to a Competition Decisions Committee (CDC) to act as decision-makers in any particular CA98 investigation following the issuing of a Statement of Objections.
3. The CDC is a Board-authorized committee comprising three persons appointed from the CDC Panel. It exercises certain decision-making powers in CA98 investigations on behalf of the FCA: see paragraph 6 for its specific functions.
4. A CDC will be appointed to be the final decision-makers each time the FCA has issued a Statement of Objections. This means that there may be more than one CDC in place at any one time.
5. The CDC and CDC Panel are separate from the FCA's executive management structure. All members of the CDC Panel are appointed for fixed periods by the Board. The Board may remove a member of the CDC Panel, but only in the event of that member's misconduct or incapacity.

### Functions of the CDC

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6. The CDC's functions are:
  - a. To decide whether to issue any letter of facts (setting out any new evidence on which the CDC proposes to rely to support existing allegations in a Statement of Objections in order to establish that an infringement has been committed);
  - b. To decide whether to issue any supplementary Statement of Objections (setting out any new or amended allegations from the original Statement of Objections and supporting evidence);

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8 5 SI 2014/458

9 Rule 3(2) of the CMA Rules

- c. Based on its review of the facts and arguments presented, to decide whether to issue an infringement decision (other than in settlement cases)<sup>10</sup> or 'no grounds for action' decision<sup>11</sup>
  - d. To give notice of and decide on the appropriate level of any penalty for an infringement, having regard to the penalty guidance in force for the time being under s38 CA98, based on a proposal put forward by the case team; and
  - e. If it has found an infringement of CA98, to decide whether to impose directions under s32 or s33 CA98 and, if so, what directions to impose.
- 7.** In exercising its functions, the CDC will consider the Statement of Objections, documents on the case file, the written and/or oral representations of the party/parties and any representations received from third parties on the Statement of Objections and any other supplementary notices issued by the FCA (see paragraphs 6.1 and 6.2 above). CDC members will attend any oral hearing(s) on liability and on penalty, described below, or review transcripts of such hearings (in the event that a member of the CDC changes after the oral hearing has taken place).
- 8.** Before deciding whether to issue an infringement or 'no grounds for action' decision and/or to issue a draft penalty statement, the CDC may ask the case team to:
- a. provide a further explanation of the Statement of Objections or any aspect of any FCA staff recommendation (for example, in relation to penalties) or accompanying papers;
  - b. explain or provide any other additional information about the matter;
  - c. investigate any matter further; and/or
  - d. issue a letter of facts and/or supplementary Statement of Objections under its direction.
- 9.** The CDC will take a decision based on all the relevant information available to it, including the views of FCA staff about the relative quality of the evidence.
- 10.** The CDC will direct the case team in the drafting of any letter of facts, supplementary Statement of Objections, draft penalty statement, and/or infringement decision or 'no grounds for action' decision.
- 11.** The CDC does not take any of the following decisions:
- a. Closing a case on grounds of administrative priority
  - b. Accepting commitments under s31A CA98
  - c. Issuing interim measures under s35 CA98
  - d. Settling a case (including taking the infringement decision following any such settlement); or
  - e. Imposing a penalty under s40A CA98 relating to failures of parties to comply with the FCA's information-gathering powers in CA98 investigations.

<sup>10</sup> That is, cases where the infringing party admits the infringement and agrees to a streamlined administrative process (the governance and process for which are set out in FG15/8 The FCA's concurrent competition enforcement powers for the provision of financial services).

<sup>11</sup> Which could include a non-infringement decision.

12. The CDC is not appointed and does not have a role in the case before a Statement of Objections is issued.
13. In addition, it is the case team and Case Sponsor who are responsible for resolving any issues raised by parties relating to access to file and redaction of confidential information, both in relation to disclosure to addressee(s) of a Statement of Objections and in relation to the publication of any final infringement decision. Such issues are subject to parties' rights to raise complaints with the FCA's Procedural Officer.
14. The CDC is accountable to the Board in respect of its procedures, policies and general arrangements, but this does not affect its independence in relation to its decisions.

## Appointment of the CDC

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15. The CDC is appointed from the CDC Panel when the FCA has issued a Statement of Objections setting out its provisional finding of infringement against one or more parties. The Executive Regulation and Policy Committee (ERPC) shall make the appointment, after considering the recommendation of the Procedural Officer as to its composition.
16. CDC Panel members can be a member of more than one CDC at any one time.
17. If a member of the CDC Panel has a potential conflict of interest in any matter in which s/he is asked to participate, s/he will disclose the conflict to the Decision-Making Committees Secretariat (the Secretariat) and to the Regulatory Decisions Committee (RDC) Chair. The RDC Chair, in conjunction with other FCA staff, will decide whether it is appropriate for the CDC Panel member to act on the CDC for the matter in question.

## CDC membership and quorum

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18. The CDC is composed of three members of the CDC Panel, who are appointed to act as CDC in any particular case. If a CDC member needs to leave his or her position on the CDC before an investigation is closed, a new member will generally be appointed by ERPC, after considering a recommendation from the Procedural Officer.
19. Each CDC will typically include at least one lawyer and one economist.
20. Decisions require at least two members of the CDC to be in agreement. Dissenting opinions will not be published.

## Case team and party liaison

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21. One member of the CDC in any particular case will be designated as the main liaison point for the FCA case team.

22. The party or parties under investigation will not engage with the CDC directly; day-to-day contact will continue to take place through the case team (under the guidance of the Case Sponsor overseeing the investigation).

## Oral hearings and report of the Procedural Officer

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23. Addressee(s) of the Statement of Objections are invited to make oral submissions to the CDC, but they are not obliged to do so. Any oral hearing will be chaired by the Procedural Officer, in accordance with the CMA Rules.
24. The CDC will determine the format and timing of the oral hearing (which could include a multi-party hearing).
25. During the oral hearing, both the CDC and FCA staff present may ask questions about the addressee's representations or questions of clarification. There is no obligation on the addressee to respond, and it may respond to questions in writing after the hearing.
26. Following the oral hearing, the Procedural Officer will report to the CDC, indicating any procedural issues that have been brought to the attention of the Procedural Officer during the investigation and confirming whether the parties' right to be heard has been respected, including an assessment of the fairness of the procedure followed in the oral hearing.

## Legal and economic input

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27. The CDC will be advised by the legal and economic advisers to the case team, though it may choose to obtain advice from a new adviser from within the FCA or externally if it feels that this is required in order to reach its final view on infringement.

## Resources

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28. The CDC shall have access to sufficient resources in order to carry out its functions including, in particular, the resources of the Secretariat. However, final decisions on case team resources (to do things as directed by the CDC) will be taken by FCA executives. If the CDC has concerns that the available resources are insufficient to enable the CDC to discharge its functions, it should raise this with the executive who will consider whether to make available additional resources or, ultimately, whether closure of the case on grounds of administrative priority is more appropriate.

## Notice of Meetings

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29. The Secretariat shall make the arrangements for each meeting, including confirming the availability of each CDC member. This includes meetings of the CDC, meetings of the CDC with the case team and meetings of the CDC with the case team and parties.

- 30.** Unless otherwise agreed, confirmation of the arrangements for each meeting shall be forwarded to each CDC member and any other relevant person as soon as practicable before the date of the meeting, together with the papers to be considered at the meeting.
- 31.** Attendance at meetings may be by telephone or similar facility, so far as practicable, albeit that all CDC members are expected to attend oral hearings in person. Decisions may also be taken in writing including email or other electronic means. The CDC meets in private.

## Records of decisions

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- 32.** The Secretariat will make and retain appropriate records of the decisions taken by the CDC.

## Duties of the CDC Panel

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- 33.** Each CDC Panel member has agreed to comply with the FCA and PSR Decision-Making Committee Members Code of Conduct. The Secretariat will record and document all disclosures of potential conflicts of interest and the steps taken to manage them.
- 34.** Each CDC Panel member must make him or herself reasonably available to attend training in relation to their role as a CDC Panel member regardless of whether they are currently sitting on a CDC.

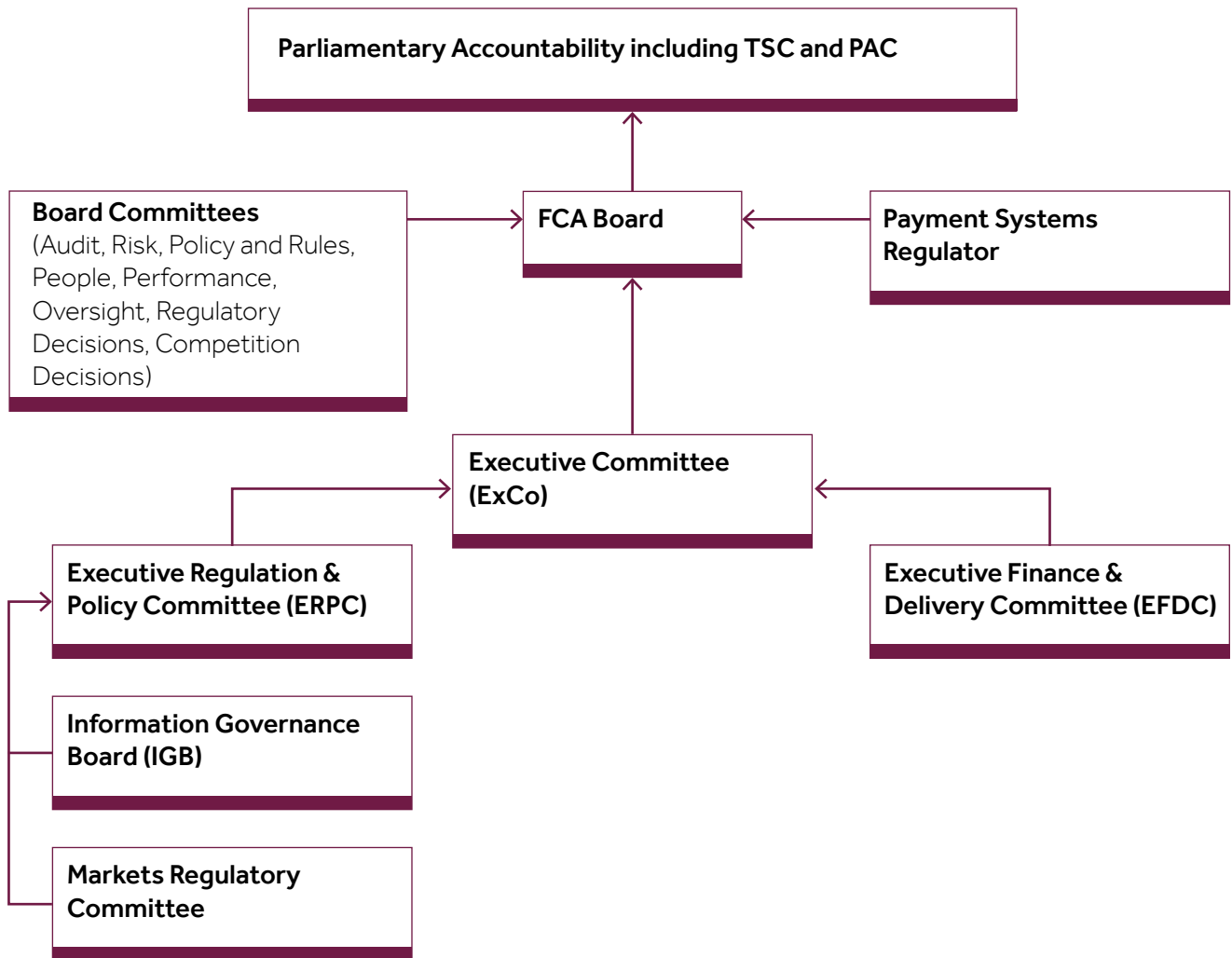
## Review

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- 35.** The Procedural Officer will review the terms of reference of the CDC annually or within three months of the closing of an investigation (whether the CDC has adopted a decision or not) as he considers appropriate. The Procedural Officer will discuss any recommendations for changes to the Terms of Reference of the CDC with FCA staff (including the case team and the Secretariat) before recommending any such changes to the Board.

## Chapter 11

# Diagram of FCA Executive Committee Structure



## Chapter 12

# FCA Articles of Association

**The Companies Acts 1948 To 2006  
Company Limited By Guarantee  
And Not Having A Share Capital  
Articles Of Association  
Of The Financial Conduct Authority <sup>12 13</sup>**

<b>Part 1 – Introduction</b>	66
1. Defined Terms	66
2. Objects	67
3. Powers	67
4. Not for distribution	68
5. Winding up	69
6. Liability of Members	69
<b>Part 2 – Directors and Secretary</b>	70
7. Directors’ terms of service	70
8. Directors’ conflicts of interest	70
<b>Powers and duties of the Directors</b>	72
9. Exercise of powers and validity of Directors’ acts	72
10. Delegation of function and powers	73
<b>Decision making by Directors</b>	73
11. Proceedings of Directors	73
12. Records of decisions to be kept	73
13. Chair	73
14. Unanimous decisions	74
15. Casting Vote	74
16. Calling a meeting of Directors	74
17. Quorum	75
18. Participation and presence at meetings	75

12 These articles should be read in conjunction with schedule 1ZA to the Financial Services and Markets Act 2000 which governs the constitution of the Financial Conduct Authority.

13 With effect from 28 October 1997, pursuant to a special resolution passed on 20 October 1997, the name of the company was changed to The Financial Services Authority. With effect from 1 April 2013, pursuant to section 1A(1) of the Financial Services and Markets Act 2000 as inserted by section 6(1) of the Financial Services Act 2012, the name of the company was changed to The Financial Conduct Authority.



<b>19.</b>	Committee proceedings	75
<b>20.</b>	Directors' written resolutions	75
	<b>Secretary</b>	76
<b>21.</b>	Appointment and termination of the appointment of the Secretary	76
<b>22.</b>	Validity of acts done by one person acting as both Director and Secretary	76
	<b>Part 3 – Members</b>	77
	<b>Becoming and ceasing to be a member</b>	77
<b>23.</b>	Number of members	77
<b>24.</b>	Termination of Membership	77
	<b>General meetings</b>	77
<b>25.</b>	Convening a general meeting	77
<b>26.</b>	Participation and presence at general meetings	77
<b>27.</b>	Notice of general meetings	78
<b>28.</b>	Quorum at general meetings and adjournment	78
<b>29.</b>	Chair at general meetings	78
<b>30.</b>	Votes of members	79
<b>31.</b>	Votes and polls at general meetings	79
<b>32.</b>	Company resolutions in writing	80
	<b>Part 4 – Administrative arrangements</b>	81
<b>33.</b>	Cheques, notes and receipts etc	81
<b>34.</b>	Accounting records	81
<b>35.</b>	Methods of communication to be used	81
<b>36.</b>	Deemed Delivery of Documents	81
<b>37.</b>	The Common Seal	82
<b>38.</b>	The Mutual Societies Seal	82
<b>39.</b>	Notices	82
<b>40.</b>	Indemnity	83

## Part 1

# Introduction

## 1. Defined Terms

### 1.1 In these Articles, unless the context requires otherwise:

Abbreviation	Description
<b>Act</b>	means the Companies Acts as defined in section 2 of the Companies Act 2006, in so far as they apply to the Authority.
<b>Address</b>	means a physical address or, in relation to Electronic Form, any number of electronic mail address(es), which has been notified to the Secretary for the purpose of receiving and sending documents.
<b>Appointed Director</b>	means a Director appointed pursuant to Schedule 1ZA paragraph 2 sub-paragraph (2) FSMA
<b>Authenticated Document</b>	relates to the Directors' and/or Members' agreement to a resolution. Directors/Members can either sign a paper copy of the resolution or signify agreement to an electronic version. For the document to be valid it must originate from an Address agreed with the Authority.
<b>Authority</b>	means The Financial Conduct Authority.
<b>Board</b>	means the governing body of the Authority appointed pursuant to Schedule 1ZA, paragraph 2 of FSMA
<b>Chair</b>	the person who for the time being holds such office pursuant to Schedule 1ZA paragraph 2 sub-paragraph (2)(a) FSMA
<b>Common Seal</b>	means the common seal of the Authority.
<b>Conflict</b>	means a situation in which a Director has or can have a direct or indirect interest that conflicts or possibly may conflict, with the interests of the Authority.
<b>Director</b>	a person appointed to the Board pursuant to Schedule 1ZA paragraph 2 sub-paragraph (2) FSMA.
<b>Document</b>	includes, unless otherwise stated, any document sent or supplied in Electronic Form.
<b>Electronic Form</b>	has the meaning given in section 1168 of the Act.
<b>Eligible Director</b>	means a director who would be entitled to vote on the matter at a meeting of directors (but excluding in relation to the authorisation of a Conflict pursuant to Article 10, any director whose vote is not to be counted in respect of the particular matter).
<b>Eligible Member</b>	means a Member who would have been entitled to vote on the resolution on the circulation date of the resolution (as defined in section 289 of the Act).

<b>Abbreviation</b>	<b>Description</b>
<b>FSMA</b>	means the Financial Services and Markets Act 2000 including any statutory modification or re-enactment thereof for the time being in force.
<b>Mutual Societies Seal</b>	means the seal of the Authority used to register mutual societies, as specified in regulations made by the Treasury under the Friendly Societies Act 1974.
<b>Present or Present in Person</b>	means any Member or Director who is present in person or deemed to be present by virtue of some other form of communication, for example, conference telephone or video link or similar communications equipment whereby all persons participating in the meeting communicate with each other.
<b>Secretary</b>	means any person appointed to perform the duties of the Secretary of the Authority.
<b>Secretary of State</b>	means His Majesty's Secretary of State for Business, Innovation and Skills
<b>Treasury</b>	means His Majesty's Treasury
<b>United Kingdom</b>	means Great Britain and Northern Ireland
<b>Writing</b>	means the representation or reproduction of words, symbols or other information in a visible form by any method or combination or methods, whether sent or supplied in Electronic Form or otherwise.

Unless the context otherwise requires, words or expressions contained in these Articles shall bear the same meaning as in the Act as in force on the date when these Articles become binding.

## 2. Objects

2.1 The Authority's objects are:

- a. to carry out any functions conferred on the Authority by or under any provision of any legislation, as amended from time to time, and to carry out such other functions or exercise such powers as, from time to time, may be carried out or exercisable by the Authority
- b. to carry out any other function or exercise any other power as may, in the Authority's view, assist or enable it to carry out the functions and powers referred to above or which the Authority considers incidental, desirable or expedient.

## 3. Powers

3.1 In pursuance of the objects set out in Article 2, the Authority has the power to:

- a.** buy, lease or otherwise acquire and deal with any property real or personal and any rights or privileges of any kind over or in respect of any property real or personal and to improve, manage, develop, construct, repair, sell, lease, mortgage, charge, surrender or dispose of or otherwise deal with all or any part of such property and any and all rights of the Authority
- b.** borrow and raise money in such manner as the Directors shall think fit and secure the repayment of any money borrowed, raised or owing by mortgage, charge, lien or other security on the Authority's property and assets
- c.** invest and deal with the funds of the Authority not immediately required for its operations in or upon such investments, securities or property as may be thought fit
- d.** subscribe for, take, buy or otherwise acquire, hold, sell, deal with and dispose of, place and underwrite shares, stocks, debentures, debenture stocks, bonds, obligations or securities issued or guaranteed by any government or authority in any part of the world
- e.** lend and advance money or give credit on such terms as may seem expedient and with or without security, to enter into guarantees, contracts of indemnity and suretyships of all kinds to receive money on deposit or loan upon such terms as the Authority may approve and to secure or guarantee the payment of any sums of money or the performance of any obligation by any company, firm or person including any holding company or subsidiary
- f.** lobby, advertise, publish, educate, examine, research and survey in respect of all matters of law, regulation, economics, accounting, governance, politics and/or other issues and to hold meetings, events and other procedures and co-operate with or assist any other body or organisation in each case in such way or by such means as may, in the opinion of the Directors, affect or advance the principal object in any way
- g.** pay all or any expenses incurred in connection with the promotion, formation and incorporation of the Authority and to contract with any person, firm or company to pay the same
- h.** enter into contracts to provide services to or on behalf of other bodies
- i.** provide and assist in the provision of money, materials or other help
- j.** open and operate bank accounts and other facilities for banking and draw, accept, endorse, issue or execute promissory notes, bills of exchange, cheques and other instruments
- k.** incorporate subsidiary companies to carry on any activity
- l.** do all such other lawful things as are incidental or conducive to the pursuit or to the attainment of any of the object set out in Article 2.

## **4. Not for distribution**

**4.1** The income and property of the Authority shall be applied solely in promoting the objects of the Authority as set out in Article 2.

**4.2** No dividends or bonus may be paid or capital otherwise returned to the Members, provided that nothing in these Articles shall prevent any payment in good faith by the Authority of:

- a. reasonable and proper remuneration to any Member, Director, officer or servant of the Authority for any services rendered to the Authority
- b. reasonable out-of-pocket expenses properly incurred by any Director.

## 5. Winding-up

**5.1** On the winding-up or dissolution of the Authority, any assets or property that remains available to be distributed or paid to the Members shall not be paid or distributed to such Members but shall be transferred to another body (charitable or otherwise):

- a. with objects similar to those of the Authority
- b. which shall prohibit the distribution of its or their income to its or their members, such body to be determined by the Members at the time of winding-up or dissolution.

## 6. Liability of Members

**6.1** The liability of each Member is limited to £1, being the amount that each Member undertakes to contribute to the assets of the Authority in the event of its being wound up while he is a Member or within one year after he ceases to be a Member, for

- a. payment of the Authority's debts and liabilities contracted before he ceases to be a Member
- b. payment of the costs, charges and expenses of the winding up
- c. adjustment of the rights of the contributories among themselves.

## Part 2

# Directors and Secretary

## 7. Directors' terms of service

- 7.1** The terms of service of the Appointed Directors as determined by the Treasury and in the case of a Director appointed pursuant to Schedule 1ZA section 2 paragraph (2) (d) FSMA, in consultation with the Secretary of State, will be notified to the Appointed Directors by the Company Secretary.
- 7.2** Directors' remuneration shall accrue from day to day.
- 7.3** The Directors may be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of Directors or committees or general meetings of the Authority or otherwise in connection with the discharge of their duties.

## 8. Directors' conflicts of interest

- 8.1** Subject to Schedule 1ZA section 6 FSMA, the Directors may, in accordance with the requirements set out in this Article, authorise any Conflict proposed to them by any Director which would, if not authorised, involve a Director (an Interested Director) breaching his duty under section 175 of the Act to avoid conflicts of interest.
- 8.2** Any authorisation under this Article 8 shall be effective only if:
- a.** the matter in question shall have been proposed by any Director for consideration in the same way that any other matter may be proposed to the Directors under the provisions of these Articles or in such other manner as the Directors may determine
  - b.** any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director
  - c.** the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's vote had not been counted.
- 8.3** Any authorisation of a Conflict under this Article 8 may (whether at the time of giving the authorisation or subsequently):
- a.** extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter or situation so authorised
  - b.** provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the Directors or otherwise) related to the Conflict
  - c.** provide that the Interested Director shall or shall not be entitled to vote in respect of any future decision of the Directors in relation to any resolution related to the Conflict

- d.** impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the Directors think fit
- e.** provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a Director of the Authority) information that is confidential to a third party, he shall not be obliged to disclose that information to the Authority, or to use it in relation to the Authority's affairs where to do so would amount to a breach of that confidence
- f.** permit the Interested Director to absent himself from the discussion of matters relating to the Conflict at any meeting of the Directors and be excused from reviewing papers prepared by, or for, the Directors to the extent they relate to such matters.

**8.4** Where the Directors authorise a Conflict, the Interested Director shall be obliged to conduct himself in accordance with any terms and conditions imposed by the Directors in relation to the Conflict.

**8.5** The Directors may revoke or vary such authorisation at any time, but this shall not affect anything done by the Interested Director prior to such revocation or variation in accordance with the terms of such authorisation.

**8.6** A Director is not required, by reason of being a Director (or because of the fiduciary relationship established by reason of being a Director), to account to the Authority for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the Directors in accordance with these Articles or by the Authority in general meeting (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

**8.7** Subject to sections 177(5) and 177(6) of the Act, a Director who is in any way, whether directly or indirectly, interested in a proposed transaction or arrangement with the Authority shall declare the nature and extent of his interest to the other Directors before the Authority enters into the transaction or arrangement in accordance with the Act.

**8.8** Subject to sections 182(5) and 182(6) of the Act, a Director who is in any way, whether directly or indirectly, interested in a transaction or arrangement that has been entered into by the Authority shall declare the nature and extent of his interest to the other Directors as soon as is reasonably practicable in accordance with the Act, unless the interest has already been declared under Article 8.8.

**8.9** Subject, where applicable, to any terms and conditions imposed by the Directors in accordance with Article 8.3(d), and provided he has declared the nature and extent of his interest in accordance with the requirements of the Act, a Director who is in any way, whether directly or indirectly, interested in an existing or proposed transaction or arrangement with the Authority:

- a.** may be a party to, or otherwise interested in, any transaction or arrangement with the Authority or in which the Authority is otherwise (directly or indirectly) interested
- b.** shall, subject to any other relevant restriction at law or under these Articles, be entitled to vote, for the purposes of any proposed decision of the Directors (or

committee of Directors) in respect of such existing or proposed transaction or arrangement in which he is interested

- c. shall, subject to any other relevant restriction at law or under these Articles, be entitled to vote at a meeting of Directors (or of a committee of the Directors) or participate in any unanimous decision, in respect of such existing or proposed transaction or arrangement in which he is interested
- d. may act by himself or his firm in a professional capacity for the Authority (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a Director
- e. may be a Director or other officer of, or employed by, or a party to a transaction or arrangement with, or otherwise interested in, any body corporate in which the Authority is otherwise (directly or indirectly) interested
- f. shall not, save as he may otherwise agree, be accountable to the Authority for any benefit which he (or a person connected with him (as defined in section 252 of the Act)) derives from any such transaction or arrangement or from any such office or employment or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the grounds of any such interest or benefit nor shall the receipt of any such remuneration or other benefit constitute a breach of his duty under section 176 of the Act.

#### **8.10** For the purposes of this Article 8:

- a. a general notice given to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Director has an interest in any such transaction of the nature and extent so specified
- b. an interest of which a Director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his.

## **Powers and duties of the Directors**

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### **9. Exercise of powers and validity of Directors' acts**

- 9.1** Subject to the provisions of the Act, other applicable legislation, and these Articles the activities of the Authority shall be managed by the Directors who may exercise all powers of the Authority as they see fit. No alteration of these Articles shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made. Any defect in appointments shall not affect the validity of any act of the Board, of any member of the Board or of any committee of the Board or of the Authority itself.
- 9.2** All acts done by any meeting of the Directors or of any committee, or by any person acting as a Director, shall, notwithstanding that it be afterwards discovered that there was some defect in any appointment relevant thereto or that any person was disqualified from acting in any capacity, or had vacated office or was not entitled to vote,



shall be as valid as if all relevant appointments had been duly made and any such person was qualified and had continued as a Director and had been entitled to vote.

**9.3** The Directors may act notwithstanding any vacancy in their body.

## **10. Delegation of function and powers**

**10.1** The Directors shall themselves perform any function and exercise any power of the Authority which is required by law to be performed or exercised by them. Where any function or power of the Authority is not required by law to be so performed or exercised, the Directors may delegate its performance or exercise to committees or sub-committees, consisting of such member or members (whether or not of their body) as they think fit or such persons as may be prescribed for the purpose, to any officer or servant of the Authority or to any other body or person who is able and willing to perform the function or exercise the power. Any committee or sub-committee so formed, and any other delegate, shall, in the discharge of the functions and in the exercise of the powers so delegated, comply with any written requirements that may be imposed, whether generally or specifically, by the Directors.

**10.2** The Directors may revoke any delegation in whole or part, or alter its terms and conditions at any time.

## **Decision making by Directors**

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### **11. Proceedings of Directors**

**11.1** The Directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings and proceedings, as they think fit.

### **12. Records of decisions to be kept**

**12.1** The Directors must ensure that the Authority keeps a record, in Writing, for at least ten years from the date of the decision recorded, of all resolutions, decisions and proceedings at all meetings of the Authority, and of the Directors, and of committees. Such record shall include the names of the persons present at each meeting.

### **13. Chair**

**13.1** The Chair shall preside as chair at every meeting of the Board. In the event that the Chair, or failing him a person nominated by him, is not present or is unwilling to act within fifteen minutes after the time appointed for the holding of the meeting, the Directors present shall elect one of the non-executive Directors present to be chair of the meeting.

## **14. Unanimous decisions**

- 14.1** A decision of the Directors is taken in accordance with this Article when all Eligible Directors indicate to each other by any means that they share a common view on a matter.
- 14.2** Such a decision may take the form of a resolution in writing, where each Eligible Director has signed one or more copies of it, or to which each Eligible Director has otherwise indicated agreement in writing.
- 14.3** A decision may not be taken in accordance with this Article if the Eligible Directors would not have formed a quorum at such a meeting.

## **15. Casting Vote**

- 15.1** If the numbers of votes for and against a proposal are equal, the Chair or other Director chairing the meeting has a casting vote.
- 15.2** Article 15.1 shall not apply in respect of a particular meeting (or part of a meeting) if, in accordance with the Articles, the Chair or other Director is not an Eligible Director for the purposes of that meeting (or part of a meeting).

## **16. Calling a meeting of Directors**

- 16.1** A Director may, and the Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors.
- 16.2** Notice of any Directors' meeting must indicate:
- a.** its proposed date and time
  - b.** where it is to take place
  - c.** if it is anticipated that Directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- 16.3** Notice of a Directors' meeting must be given to each Director but this notice need not be in writing.
- 16.4** It shall not be necessary to give notice of a meeting to a Director who is absent from the United Kingdom.

## **17. Quorum**

- 17.1** The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed shall be five Eligible Directors.

**17.2** The quorum for meetings of committees of the Board may be fixed by the Directors, and unless so fixed shall be three Eligible Directors.

## **18. Participation and presence at meetings**

**18.1** Directors are deemed to be participating in any meeting of the Directors or any committee thereof as long as they are Present in Person.

## **19. Committee proceedings**

**19.1** Except where a chair is appointed, a committee may elect a chair of its meetings. If no such chair is appointed or elected, or if at any meeting the chair (or any deputy) is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chair of the meeting.

**19.2** A committee may meet and adjourn as it thinks fit. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chair shall have a second or casting vote.

## **20. Directors' written resolutions**

**20.1** Any Director may propose a directors' written resolution.

**20.2** The Secretary must propose a directors' written resolution if a Director so requests.

**20.3** A directors' written resolution is proposed by giving notice of the proposed resolution to the Directors.

**20.4** Notice of a proposed directors' written resolution must indicate:

- a.** the proposed resolution
- b.** the time by which it is proposed that the Directors should adopt it.

**20.5** To be valid, a proposed directors' written resolution must be given to all persons entitled to receive notice of a meeting of the Directors or a committee, either by means of oral communication (such as telephone) or in Writing to an agreed Address.

**20.6** Any decision which a person giving notice of a proposed directors' written resolution takes regarding the process of adopting that resolution must be taken reasonably in good faith.

**20.7** A proposed directors' written resolution is adopted when a response to the proposed written resolution by Authenticated Document which identifies the resolution to which it relates and signifies unambiguous agreement to the terms of the resolution has been received by the Secretary from Directors entitled to vote comprising a simple majority and constituting a quorum.

- 20.8** The written resolution shall be as valid and effectual as if it had been passed at a meeting of Directors or of a committee duly convened and held.
- 20.9** All written resolutions shall be ratified at the next meeting of the Directors where the decision and any comments will be formally recorded in the minutes.
- 20.10** In Articles 10 to 12, 14, 19 to 22 and 39 to 40, "committee" includes "sub-committee".

## Secretary

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### **21. Appointment and termination of the appointment of the Secretary**

- 21.1** There shall be a Secretary who shall be appointed by the Directors for such term, at such remuneration and upon such conditions as they may think fit; and any Secretary so appointed may be removed by the Board at a meeting of the Directors duly convened in accordance with these Articles and any such appointment may not be made or terminated by any committee of the Board. The Secretary may also be an executive officer or Director of the Authority.

### **22. Validity of acts done by one person acting as both Director and Secretary**

- 22.1** A provision of the Act or these Articles requiring or authorising a thing to be done by or to a Director and the Secretary shall not be satisfied by its being done by or to the same person acting both as Director and as, or in place of, the Secretary.

## Part 3

# Members

## Becoming and ceasing to be a member

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### 23. Number of members

**23.1** The subscribers to the Memorandum of Association of the Authority and any person who becomes a Director shall be Members of the Authority. No other person may become a Member of the Authority.

**23.2** Membership of the Authority shall not be transferable or transmissible.

### 24. Termination of Membership

**24.1** A Member may terminate his membership of the Authority by depositing a written notice to such effect at its registered office.

**24.2** A Member shall cease with immediate effect to be a Member of the Authority upon ceasing to be a Director thereof.

**24.3** A person's membership terminates when that person dies.

## General meetings

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### 25. Convening a general meeting

**25.1** The Directors may, whenever they think fit, convene a general meeting. If at any time there are not sufficient Members present and capable of acting to form a quorum, any Director may convene a general meeting in a similar manner as early as possible as that in which meetings may be convened by the Directors.

### 26. Participation and presence at general meetings

**26.1** A Member is deemed to be participating in any general meeting of the Authority as long as they are Present in Person at such meeting.

## **27. Notice of general meetings**

- 27.1** A general meeting of the Authority shall be called by 14 days' notice in accordance with the provisions of Article 39. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business and shall be given, in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Authority in general meeting, to such persons as are, under these Articles, entitled to receive such notices from the Authority, including the Directors, the Members and the auditors:
- 27.2** Provided that a meeting of the Authority shall, notwithstanding that it is called by shorter notice than that specified in this Article 27, be deemed to have been duly called if it is so agreed by a majority in number of the members having a right to attend and vote at the meeting, being a majority together representing not less than ninety percent of the total voting rights at that meeting of all the Members.
- 27.3** The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

## **28. Quorum at general meetings and adjournment**

- 28.1** No business shall be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business; five members Present in Person shall be a quorum.
- 28.2** If within half an hour from the time appointed for the meeting a quorum is not Present, the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the Directors may determine. If at the continuation of the adjourned meeting a quorum is not Present within half an hour from the time appointed for the meeting the Member or Members Present shall be a quorum.
- 28.3** The chair of a general meeting at which a quorum is present may, with the consent of such meeting (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place. No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

## **29. Chair at general meetings**

- 29.1** The Chair, failing whom a person nominated by the Chair, shall preside as chair at every general meeting of the Authority. If none of such persons are Present within fifteen

minutes of the appointed time for the holding of the meeting or they are unwilling to act, the Directors present shall elect one of the Non-Executive Directors Present to be chair of the meeting.

## **30. Votes of members**

**30.1** Every Member shall have one vote. All votes shall be given personally or in accordance with Article 31.

## **31. Votes and polls at general meetings**

**31.1** At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:

- a.** by the chair of the meeting, or
- b.** by at least two Members, or
- c.** by any Member or Members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting.

**31.2** Any member who is deemed Present shall have their vote counted by the chair of the meeting and added to the votes of those actually present at the meeting.

**31.3** Unless a poll be so demanded, a declaration by the chair of the meeting that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of proceedings of the Authority shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn with the consent of the Chair.

**31.4** Except as provided in Article 31.6, if a poll is duly demanded it shall be taken in such manner as the chair of the meeting directs and the result of a poll shall be deemed to be the resolution of the meeting at which the poll was demanded. Any Member Present shall be entitled to take part in any poll in such manner as the chair may direct.

**31.5** In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting shall be entitled to a second or casting vote in addition to any other votes he is otherwise entitled to cast on that resolution.

**31.6** A poll demanded on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chair of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

## **32. Company resolutions in writing**

- 32.1** A written resolution may be passed to resolve any business which could have been passed by the Authority in a general meeting except for the removal of a Director before the end of their term of office.
- 32.2** The Secretary of the Authority must send the written resolution to every Eligible Member to the Address provided by the Member. The resolution must be accompanied by:
- a.** statement informing the Member how to signify agreement to the resolution
  - b.** the date by which the resolution must be passed.
- 32.3** A Member signifies his agreement to the proposed written resolution when the Authority receives an Authenticated Document, identifying the resolution to which it relates and indicating unambiguous agreement to the resolution. To be valid the Authenticated Document must have been sent from the agreed Address.
- 32.4** A written resolution is deemed as passed when the required majority of Eligible Members have signified approval in Writing and shall be as valid and effective as if the same had been passed at a general meeting of the Authority duly convened and held.



## Part 4

# Administrative arrangements

### 33. Cheques, notes and receipts etc

- 33.1** All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the Authority, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the Directors shall from time to time by resolution determine.

### 34. Accounting records

- 34.1** The Directors shall cause accounting records to be kept in accordance with the Act.
- 34.2** The books of account shall be kept at the registered office of the Authority, or, subject to the Act, at such other place or places as the Directors think fit, and shall always be open to the inspection of the Directors.

### 35. Methods of communication to be used

- 35.1** Subject to the Articles, anything sent or supplied by or to the Authority under the Articles may be sent or supplied in any way in which the Act provides for Documents or information which are authorised or required by any provision of the Act to be sent or supplied by or to the Authority.
- 35.2** Subject to the Articles, any notice or Document to be sent or supplied to a Director in connection with the taking of decisions by Directors may also be sent or supplied by the means by which that Director has asked to be sent or supplied with such notices or Documents for the time being.
- 35.3** A Director may agree with the Authority that notices or Documents sent to that Director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than that set out in these Articles.

### 36. Deemed Delivery of Documents

- 36.1** This Article applies to Directors and Members where the Authority has sent information to an Address.
- 36.2** Where notices, documents or information are sent by post to an Address in the United Kingdom, and the Authority is able to show that it was properly addressed, prepaid and posted, it is deemed to have been received by the intended recipient 48 hours after it was posted.

- 36.3** Where notices, documents or information are sent or supplied in Electronic Form, and the Authority is able to show that it was properly addressed, it is deemed to have been received by the intended recipient 3 hours after it was sent.
- 36.4** Where notices, documents or information are sent or supplied by means of a website, secure portal, or through access to the Authority's systems it is deemed to have been received by the intended recipient:
- a.** when the material was first made available on the website, secure portal, or Authority's system; or
  - b.** if later, when the recipient received (or is deemed to have received) notice of the fact that the material was available on the website, secure portal or Authority's system.

## **37. The Common Seal**

- 37.1** The Directors shall provide for the safe custody of the Common Seal, which shall only be used by the authority of the Directors or of a committee authorised by the Directors. The Directors may determine who shall sign any instrument or class of instruments to which the Common Seal is or shall be affixed and unless otherwise so determined any such instrument or class of instruments shall be signed by a Director and shall be countersigned by the Secretary, or by a second Director.

## **38. The Mutual Societies Seal**

- 38.1** The Directors shall provide for the safe custody of the Mutual Societies Seal, which shall only be used by the authority of the Directors or of a committee authorised by the Directors. The Directors may determine who shall sign any instrument to which the Mutual Societies Seal is affixed and unless otherwise so determined any such instrument shall be signed by a Director and shall be countersigned by the Secretary, or by a second Director.

## **39. Notices**

- 39.1** Notice of general meetings given to or by any person pursuant to the Articles shall be in Writing.
- 39.2** Any notice given to or by any person pursuant to the Articles in Writing shall be to an Address for the time being notified for that purpose to the person giving the notice.
- 39.3** The Authority may give any notice to a Member either personally or by sending it by post in a prepaid envelope addressed to the member at his registered address or by leaving it at that address or by giving it in Electronic Form to an address for the time being notified to the Authority by the Member. A Member whose registered address is not within the United Kingdom and who gives to the Authority an address within the United Kingdom at which notices may be given to him, or an address to which notices may be

sent in Electronic Form, shall be entitled to have notices given to him at that address, but otherwise no such member shall be entitled to receive any notice from the Authority.

**39.4** A Director or Member Present at any meeting of the Authority shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.

## **40. Indemnity**

**40.1** Subject to Article 40.2, but without prejudice to any indemnity to which a relevant officer is otherwise entitled:

- a.** each relevant officer shall be indemnified out of the company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer in the actual or purported execution and/or discharge of his duties, or in relation to them including any liability incurred by him in defending any civil or criminal proceedings, in which judgment is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which the court grants him, in his capacity as a relevant officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to the company's affairs; and
- b.** the Authority may provide any relevant officer with funds to meet expenditure incurred or to be incurred by him in connection with any proceedings or application referred to in article 40.1(a) and otherwise may take any action to enable any such relevant officer to avoid incurring such expenditure.

**40.2** This article does not authorise any indemnity to the extent that such indemnity would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law and any such indemnity is limited accordingly.

**40.3** The Directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant officer in respect of any relevant loss.

**40.4** In this article:

- a.** a "relevant loss" means any loss or liability which has been or may be incurred by a relevant officer in connection with that relevant officer's duties or powers in relation to the Authority or any pension fund of the Authority; and
- b.** a "relevant officer" means any current or former Director, Secretary or other officer of the Authority and such other persons as the Authority may from time to time determine.

