

# Annual Governance Report 2021-2022

FSA 22-12-08 - Annual Governance Report 2021-2022. Report by Susan Jebb, Chair of the FSA Board.

## 1. Summary

1.1 The Board is asked to:

- **Agree** with the Working Group's proposed responses to the recommendations from the external effectiveness review of the Board.
- **Agree** to the proposed changes to the Business Committee Terms of Reference and the Standing Orders for FSA Board Meetings, and the Audit and Risk Assurance Committee Terms of Reference.
- **Agree** to the automated online system for accepting public questions and its introduction for the March 2023 Board meeting.

## 2. Introduction

2.1 The Food Standards Act 1999 provides that the Agency may regulate its own proceedings. Good governance requires that the Board and its Committees operate to clear, agreed Terms of Reference (ToR) and in accordance with Standing Orders (SOs). Since 2014, the Board has reviewed its suite of ToR and SOs annually.

2.2 In line with the ToR, the Board delegates to Committees certain functions mainly associated with implementation and corporate governance of the Agency. Committees currently constituted under this power are the Business, and the Audit and Risk Assurance Committees.

2.3 The Board agrees and reviews the ToR of the Business and the Audit and Risk Assurance Committees annually, together with the ToR and SOs for the Board.

2.4 We also annually consider the effectiveness of the Board, and over the last year this has involved undertaking an external effectiveness review.

## 3. Annual Review of Board Effectiveness

3.1 The Corporate Governance Code for Central Government Departments 2017 requires that a Board effectiveness evaluation is carried out annually and with independent input at least once every three years.

3.2 Upon joining the Board in July 2021, the Chair initiated an external effectiveness review of the Board to assist her in identifying how best to work with the Board and improve its role in FSA governance.

3.3 The scope of the external review was in line with the Corporate Governance Code for Central Government Departments 2017 and included: how the Board and its Committees are organised; what skills the Board Members have; as well as relationships and behaviours among the Board and between the Board and the Executive team.

3.4 It was expected that the external review would examine both the formal, visible structures through which the Board operates, as well as the more informal and less tangible aspects about how we operate, including the nature and tone of working relationships between the Board and Chair and the Executive.

3.5 Following an open external procurement exercise, Jo Clift Consulting was awarded the contract to conduct the Board Effectiveness Review in November 2021. The [final report from the review](#) was published and discussed at the [June 2022 FSA Board meeting](#).

3.6 Since then, the Working Group set up to consider the responses to the review's recommendations has met three times and the final proposed responses to the recommendations for the Board to consider and agree are listed at **Annex A**.

## 4. Response to Recommendations from the 2021/22 External FSA Board Effectiveness Review

4.1 Of the 31 recommendations, three areas are addressed here in more detail: Reconfigured Business Committee; Diversity; and Appraisals.

### Reconfigured Business Committee

4.2 Recommendation 3 challenged us on the need for the Business Committee:

'There is no clear reason to have a separate Business Committee. The Business Committee items could be dealt with at the main Board under a 'finance, delivery and performance' section of the agenda.'

4.3 In our response we said that we consider there is still a need to have the opportunity for the Board to be assured about the delivery of routine business. However, we accept that the current arrangements are not as effective as they might be, and some aspects would benefit from greater scrutiny.

4.4 The Working Group has developed proposals for a reformed Business Committee (**Annex B**). This includes moving some items including specific annual update reports from the Business Committee to the Board meeting, thus allowing scrutiny by the Wales and Northern Ireland Food Advisory Committees prior to the Board meeting and opening them up to questions from stakeholders. The Business Committee will focus on the annual business plan and oversight of major resource decisions, routine scrutiny of performance information, use of resources – people and financial, and monitoring operational and delivery risk in delivery of the annual business plan. In practice, this will primarily involve scrutiny of the performance and resources report and the budget plan.

4.5 The proposal also includes plans for all Business Committee papers to be included with a Report to the Board from the Business Committee.

### Diversity

4.6 Recommendation 29 challenged us to widen the diversity of voices on the Board through our recruitment practices:

'The current recruitment exercise should aim to widen both the skill base of the Board, and the diversity of voices around the table.'

4.7 In our response, we signalled that we recognise that more needs to be done in this space and that our previous efforts to enhance diversity had not led to material change in the diversity of the Board. We are now speaking with specialist diverse and inclusive recruitment bodies and charities, as well as colleagues from other government departments and networks to learn best practice with the aim of improving our reach to people from groups underrepresented on the current Board.

4.8 In addition to improving our recruitment practices, we recognise that we need to do more to improve how diverse voices are heard on an ongoing basis by the current Board. We are working with the FSA's Inclusion Lead to explore ways in which the Board can have more interaction with the FSA's staff networks.

4.9 We are also seeking opportunities in our responses to other recommendations to step up our work on improving the Board's access to diverse voices. For example, in response to Recommendation 27,

'Board members should consider their role as cultural leaders within the FSA. They should pay attention to People and Culture issues on a regular basis.'

a Board member has been allocated the remit of 'People' as their special area of interest.

### **Appraisals**

4.10 While the Chair has always held regular conversations with each Board Member to discuss their performance, the review recommended consolidating this process and introducing other elements such as peer feedback (Recommendation 22), training needs (Recommendation 23) and Board Members' knowledge of risk as it pertains to the FSA (Recommendation 8).

4.11 Therefore, going forward each Board Member will have a documented annual appraisal with the Chair based on performance against their formal objectives. These objectives will be set in line with those for Non-Executive Directors of other non-Ministerial departments. Once during a Board Member's term of appointment, the appraisal will also consider peer feedback.

4.12 The Board is asked to agree with the Working Group's proposed responses to the recommendations listed at Annex A.

4.13 While the Review made no recommendations on the Wales Food Advisory Committee (WFAC) and the Northern Ireland Food Advisory Committee (NIFAC), it did state at 4.4:

'Currently, the relationship between WFAC/NIFAC and the main Board feels like one of formal reporting rather than joint exploration. There could be a more proactive relationship between the FSA Board and WFAC/NIFAC. There may be issues which WFAC/NIFAC wish the FSA Board to consider, and similarly there may be strategic issues which the FSA main Board would like to get soundings on from WFAC and NIFAC.'

4.14 Post EU Exit, the responsibilities of the FSA have increased considerably, and it is more important than ever that we ensure we are listening and responding to the needs of consumers in Wales and Northern Ireland. The roles of the Board Members for Wales and Northern Ireland, who concurrently hold the positions of Chairs of the FACs, are a vital part of our relationship with Ministers and stakeholders in each of those countries.

4.15 Therefore, in conjunction with the Chairs of the FACs and the FSA Executive Directors with responsibility for Wales and Northern Ireland, the Chair intends to take sounding to how we can improve how the FACs operate and interact with the Board.

## 5. Annual Review of Terms of Reference and Standing Orders

5.1 The proposed changes to the Business Committee would require amends to the current ToR for the Business Committee and the SOs for FSA Board Meetings.

5.2 A version of how the ToR for the Business Committee would read if the Board were to accept the Working Groups' proposed changes is shown at **Annex 3 in Annex B**.

5.3 A version of how the SOs for the Board would read if the Board were to accept the Working Groups' proposed changes is shown at **Annex C** in which changes to the current SOs are scored out.

5.4 No amends would be required to the current Terms of Reference for the FSA Board which are attached at **Annex D** for reference.

### Terms of Reference for the Audit and Risk Assurance Committee

5.5 The 2021 ToR for Audit and Risk Assurance Committee (ARAC) were most recently reviewed by the Committee, on the Board's behalf, in May 2022 when the following amends were suggested:

'The Chief Executive, as Accounting Officer, the Director of Finance and Performance, the Head of Planning and Performance, the Head of Audit Assurance, **a representative of FSA Directors responsible for audits of Official controls (regulatory audits) in England, Wales and Northern Ireland** and a representative [1] of the external auditors would normally be invited to attend.'

5.6 The amendment formally recognises ARAC's role in providing scrutiny in relation to audits of official controls conducted by the FSA following the recent separation of the line management of internal audit and regulatory functions.

5.7 If the Board is content with the updated ARAC ToR (**Annex 1 in Annex B**), they will be adopted as ARAC agreed them in May 2022. ARAC, and then the Board, will review the ARAC ToR again as of May 2023.

5.8 The Board are asked to agree to the proposed changes to the Business Committee Terms of Reference and the Standing Orders for FSA Board Meetings, and the Audit and Risk Assurance Committee Terms of Reference.

## 6. Board Appointments

6.1 Appointments to the FSA Board are made by Health Ministers in Westminster, Wales and Northern Ireland. The statutory requirement for Board membership is 8-12 members, plus the Chair and Deputy Chair. This requirement reflected there being two appointees for Scotland, which are no longer required since Food Standards Scotland was created as a stand-alone department and Board north of the border. The working assumption is therefore that the Board should be between 6-10 members, plus the Chair and Deputy Chair.

6.2 In March 2022 Mark Rolfe, Timothy Riley and Margaret Gilmore were reappointed to second terms of three years from 18 November 2022.

6.3 Justin Varney and Hayley Campbell-Gibbons were appointed Members of the Board for terms of three years as of 1 September 2022.

6.4 Colm McKenna stood down as the Member for Northern Ireland and the Chair of the Northern Ireland Food Advisory Committee (NIFAC) as of 31 August 2022. Colm's successor, Anthony Harbinson, was appointed for a three-year term as of 1 September 2022.

6.5 At the time of writing, preparations are underway to launch a campaign to recruit Ruth Hussey's successor as Deputy Chair ahead of Ruth's term coming to an end on 30 June 2023. The Chair will also seek to secure Ministerial agreement to increase the membership of the FSA Board to its full complement.

### Boardroom Apprentice

6.6 For the first time the FSA is delighted to be participating in the [Boardroom Apprentice Scheme](#). Boardroom Apprentice is a Board learning, development and placement programme which enables those who would like to serve on a public Board to gain experience before they take that step. It seeks to enable a wider diversity of individuals to play their part on Boards. The scheme originated in Northern Ireland and has recently expanded across the UK. Our apprentice, Judith Hanvey, was appointed as of 1 September 2022 for one year.

6.7 Judith will participate in meetings of the Northern Ireland Food Advisory Committee including being able to comment on Board papers. Judith will also be sighted on all material circulated to the Board and included in discussions but will only have observer status at Board meetings.

6.8 Changes in Board membership since the [2021 Governance Report](#) are shown in the table below:

Board position	Appointment end date	Appointee name	Term	Notes on appointment
Chair	30 June 2024	Susan Jebb	First term of 3 years expires 30 June 2024	-
Deputy Chair	30 June 2024	Ruth Hussey	First term of 3 years as Deputy Chair, expires 30 June 2023.	Served 4 years previously as Board member for Wales. Served as Interim Chair 1 February to 30 June 2021.
Member for Wales	31 August 2023	Peter Price	First term, expires August 2023.	-
Member	17 November 2025	Margaret Gilmore	Second term expires 17 November 2025.	-
Member	17 November 2025	Tim Riley	Second term expires 17 November 2025.	-
Member	17 November 2025	Mark Rolfe	Second term expires 17 November 2025.	-
Member	31 May 2024	Fiona Gately	First term expires 31 May 2024.	-
Member	31 May 2024	Lord David Blencathra	First term expires 31 May 2024	-
Member	31 August 2025	Hayley Campbell-Gibbons	First term expires 31 August 2025	-
Member	31 August 2025	Justin Varney	First term expires 31 August 2025	-
Member for Northern Ireland	1 September 2025	Anthony Harbinson	First term expires 31 August 2025	-
Member for Northern Ireland	1 September 2025	Colm McKenna	Second term, began 1 September 2019 originally for 1 year.	Second term had been extended indefinitely due to COVID-19 impacts. With appointment of successor Colm stood down as of 31 August 2022

## 7. FSA Board Meetings

7.1 As planned, FSA Board and Business Committee meetings were held in public in Cardiff in December 2021, in Birmingham in March 2022 and in Newcastle in June 2022. The planned in-

person meeting in Belfast in September 2022 was changed to a Zoom meeting instead on account of the mourning period for Queen Elizabeth II.

7.2 The Board has continued to have 'keep in touch' calls with the Chief Executive and her team in the months in which there has not been a scheduled Board meeting. These are information sharing opportunities in addition to the weekly email of information circulated to the Board.

7.3 As per the SOs, the dates for the 2023 Board Meeting were agreed by the end of March 2022 and published on [our website](#). They are 22 March, 21 June, 20 September and 13 December.

#### **Questions from the Public for Board Meetings**

7.4 While the external review of the Board did not mention the process by which we handle questions from the public for Board meetings, it was raised by stakeholders and the Chair felt it was a good opportunity to undertake an internal review of the process.

7.5 There are no SOs regarding the submission of questions from members of the public to the FSA Board, though it has become established custom and practice that questions are read out during the meeting. There is time set aside on the agenda for every meeting for questions to be taken from the floor.

7.6 As the FSA carries out its expanded role and functions post EU Exit the volume of questions from the public has steadily increased. This has meant more time being devoted to reading out questions. For example, in June 2022 12 questions were submitted ahead of the Board meeting, some quite complex and long.

7.7 It is highly likely that the number of questions we receive will continue to increase. If we continue with the current approach this will use up valuable discussion time of Board business.

7.8 Therefore, the proposal is to move to an online, automated system for questions – and the answers to them – to form an integral part of the materials published and placed on the record at each Board meeting.

7.9 Members of the public will be asked to submit their questions using online pro-forma available on the FSA website. The deadline for submission of questions will be 12:00 (mid-day) two days before the day of the Board meeting. The intention is that the system will automatically forward the questions to Board Members and Executive Directors, providing sufficient time to read the questions and if appropriate to draw on the points raised in the Board discussion. All questions will be published on the Board section of the website on the day of the meeting so that those watching can see the questions.

7.10 A response to all questions, regardless of whether they are raised in the oral discussion, will be given in writing within 20 working days of the meeting and answers will appear in the Board meeting section of the website along with all other related materials. Even if the question is answered during the discussion at the Board a written answer will also be sent to the questioner and placed on the website.

7.11 Moving to this automated approach will take some time to develop and integrate into the website and its supporting systems, including any personal data implications.

7.12 No changes are proposed in the questions raised in person at the end of each Board meeting

7.13 The Board is asked to agree to the automated online system for accepting public questions and its introduction for the March 2023 Board meeting.

## 8. Conclusion And Recommendations

8.1 The Board is asked to:

- **Agree** with the Working Group's proposed responses to the recommendations from the external effectiveness review of the Board.
- **Agree** to the proposed changes to the Business Committee Terms of Reference and the Standing Orders for FSA Board Meetings, and the Audit and Risk Assurance Committee Terms of Reference.
- **Agree** to the automated online system for accepting public questions and its introduction for the March 2023 Board meeting.

## ANNEX A

### Responses to Recommendations from the External FSA Board Effectiveness Review

A summary of the recommendations within the report and our proposed responses for the Board to agree to is given below:

1. The corporate risk register should continue to be shared on an annual basis with the Board, and also issued in advance of the annual risk workshop.

**Response** – Accept. The annual sharing of the corporate risk register is in advance of the January Risk Workshop.

2. A revised performance report should be structured around a set of measures/key performance indicators as approved by the main Board. These should reflect the key success criteria for the strategy, whilst also recognising the need for performance metrics (KPIs) for the operational aspects of the business.

**Response** – Accept. A revised performance report was presented to the September 2022 Business Committee.

3. There is no clear reason to have a separate Business Committee. The Business Committee items could be dealt with at the main Board under a 'finance, delivery and performance' section of the agenda.

**Response** – This has prompted careful thought and reflection. We consider there is still a need to have the opportunity for the Board to be assured about the delivery of routine business.

However, we accept that the current arrangements are not as effective as they might be. We propose to reconfigure the Business Committee as detailed in the paper from paragraph 4.2.

4. Regarding the 'FSA performance at managing Local Authorities,' the Board papers and discussions should focus on monitoring of the FSA's performance in relation to Local Authorities, as opposed to monitoring the performance of the Local Authorities (not within FSA control).

Alongside this, thought should be given to the KPIs/metrics which track the Local Authorities' ability to perform their role.

**Response** – Accept, and we propose that the Local Authority Performance paper will move to the agenda of the Board meeting. This has been reflected in the reconfigured Business Committee.

5. Material from the Science Council and the relevant Science Committees to be fed into the annual risk and horizon scanning workshops.

**Response** – Accept. This was part of the Horizon Scanning workshop at the Board retreat in January 2022.

6. The CSA, FSA Chair, Science Council Chair, ACSS Chair and NI/WIFAC Chairs to meet e.g., three times a year to explore shared opportunities and challenges.

**Response** – Meetings already take place between these people in varying combinations and the Chair of the Science Council attends the Board on an annual basis to discuss strategic issues. An additional meeting is not considered likely to bring additional benefits.

7. The Board should hold an annual horizon scanning workshop. This could be linked to the annual risk workshop.

**Response** – Accept. A horizon scanning workshop was held for the first time in January 2022 alongside the annual risk workshop and it is intended that this will continue going forward.

8. Board members should satisfy themselves that they know how the risk analysis process, the risk appetite exercise, the corporate risk register, the strategic risk management process and the risk analysis process relate to each other. The corporate risk register, which is currently seen by ARAC, should continue to be presented to the Board on an annual basis, specifically in advance of an annual risk workshop.

**Response** – Accept. The risk register will continue to be presented and discussed by the Board on an annual basis. Risk knowledge will be added to Board Member objectives and considered at annual appraisals.

9. The annual risk workshop should continue and should include pre-reading of the relevant documents and an opportunity for Board members to workshop what they perceive as key risks, rather than being 'informed' of key risks by the Executive.

**Response** – Accept. This was the format of the Retreat in January 2022 and will be going forward.

10. Ideally the annual risk workshop will be linked to an annual horizon scanning workshop, which should explore medium- and long-term risks to the FSA.

**Response** – Accept. This was the format of the Retreat in January 2022 and will be going forward.

11. Where annual reports are retained, the focus should be on prospective as opposed to retrospective thinking, and should therefore focus on future work, horizon scanning, and how the future work programme of the group/body/discipline relates to and supports the FSA's new strategy. Retrospective comments should try to emphasise lessons learnt.

**Response** – Accept. The list of annual papers was reviewed by the Chair and the Executive team in 2021. The Board Secretariat will update guidance on how to write Board papers.

12. Where possible, annual reports should also reference the FSA's risk environment and how their areas of expertise relate to the current or future risks of the organisation.

**Response** – Accept. The Board Secretariat will update guidance on how to write Board papers.

13. The Board pack should make it easier for Board members to understand why they are seeing a particular paper at this time.

**Response** – Accept. The Board Secretariat will update guidance on how to write Board papers.

14. Given that the Secretariat often has complex and strategic decisions to take and to communicate, this review would have expected the team to be supported more actively at SCS level. It is understood that there is a new private office structure led by a Deputy Director, who can provide this support.

**Response** – Accept. Steven Pollock, Director of Communications, has been responsible for Private Office including the Board Secretariat since February 2022.

15. There should be 'rights and responsibilities' in both directions when it comes to hybrid Board working. There should be 'mandated' events when Board and Executive members must meet face to face (e.g., Board dinners and team building events), but also times when hybrid meetings are the norm.

**Response** – Accept. The Board and the Executive team are always expected to attend in person. Junior officials can join the Board meeting via Zoom but ideally there should not be more than one on-screen presenter to support Executive Directors. For internal events, a limited number of presenters are allowed on screen, with observers in the background.

16. The FSA website could be improved in terms of accessing information on the committees, their papers and recordings, and in terms of navigating between these items.

**Response** – Accept. The website was update in February 2022.

17. Rather than use these [Tuesday] sessions to look at policies in depth, they could be used to explore new issues which the Executive are facing, which the Executive would like to make the Board aware of. Any issues which become significant should also be shared in the public forum, for transparency reasons.

**Response** – The agenda for 'Tuesday' sessions will continue to be agreed between the Chair and CEO to prioritise key topics and maximise the limited time available for in-person conversations.

18. Time should be allocated for face-to-face relationship and team building between all NEDs (without the Executive or stakeholders present), with an awareness that this is particularly relevant to those who are new to the organisation.

**Response** – Accept. The Board has face to face Board member time only on a Tuesday before a Board meeting. The Board has private Board Member time during Keep in Touch (KIT) calls which take place in months in between Board meetings.

19. Particular thought should be given to how to help those who are new to Whitehall or the Public Sector to understand the context, rules and culture of a government organisation.

**Response** – Accept. Cabinet Office Non-Executive Director induction training is available. The appropriateness of this for each new intake of new Board Members will be considered going forward as part of their training needs.

20. The buddying scheme for established NEDs to mentor new NEDs should be continued.

**Response** – Accept.

21. A reverse mentoring scheme could be established for Board members, to hear and learn from a junior member of FSA.

**Response** – The Board has regular meetings with teams across the FSA which junior members of staff attend.

22. Ensure that all NED appraisals take place annually and are informed by peer feedback.

**Response** – Accept. The Chair's Office and the Board Secretariat will ensure appraisals are set up on an annual basis, with a more detailed appraisal, including a request for peer feedback, at least once in each appointment cycle.

23. NED Training needs should be discussed with the Chair during the NED induction process, and regularly reviewed, e.g., as part of the Appraisal process.

**Response** – Accept. The Board Secretariat will add training to Non-Executive Directors' objectives to be considered in the introductory discussion between the Chair and new NEDs and to be considered at annual appraisals.

24. Time should be allocated for Board and Executive members to get to know the background, experience and skill sets of each other.

**Response** – Accept. Board Members and Executive Directors go on stakeholder visits ahead of Board meetings together and attend a working dinner the evening before a Board meeting.

25. At Board events, there should be time allocated for Board members to meet privately face to face, and also for Board/Executive members to have time to interact away from the work agenda, without external stakeholders present.

**Response** - Accept. The Board has private face to face time on a Tuesday before a Board meeting and online during Keep in Touch calls in months between in-person Board meetings. Board Members and Executive Directors travel to stakeholder visits ahead of Board meetings together and attend a working dinner the evening before the Board meetings as well as during refreshment breaks during the Board meeting.

26. There should be an annual workshop on 'ways of working' to review lessons learnt and how the Board/Executive relationships can be optimised.

**Response** – We recognise 'ways of working' as an important issue that should be returned to regularly. We will adapt the format to account for prevailing circumstances and issues.

27. Board members should consider their role as cultural leaders within the FSA. They should pay attention to People and Culture issues on a regular basis.

**Response** – Accept. As of September 2022, one Board Member has been allocated 'People' as their special area of interest.

28. Some areas of knowledge that should be considered when recruiting future FSA NEDs:

- Veterinary
- The Food Industry ('farm to fork') and Food Retail
- Digital and data, possibly with particular reference to online delivery of takeaway food
- Finance and risk (ARAC)
- Voice of the consumer

**Response** – Accept. The Chair identifies the skills' gaps on the Board ahead of a Board recruitment campaign by conducting a skills assessment of Board Members.

29. The current recruitment exercise should aim to widen both the skill base of the Board, and the diversity of voices around the table.

**Response** – Accept. We recognise the need to increase diversity on the Board and are seeking to improve it. We are consulting with relevant bodies for future campaigns and considering steps to address shorter-term lack of diversity through community outreach and a dedicated Board Member to consider our approach to People. Further detail can be found in the paper from paragraph 4.6.

30. The FSA/DHSC should look to raise the salary of NED members and increase the NED term to four years.

**Response** – An increase to the salary or term of appointment for NEDs is not considered appropriate at this time.

## **ANNEX B**

### **Proposals for Business Committee**

#### **Background**

1. The recent Board Effectiveness Review found that there was some confusion about the role and remit of the Business Committee. A lack of clarity about which papers fell naturally to the Business Committee as opposed to the Audit and Risk Assurance Committee (ARAC) or the main Board meeting, and confusion about the varying responsibilities of each body led the Review to

conclude that “there is no clear reason to have a separate Business Committee.”

2. The paper seeks to address these issues, with a renewed focus on scrutinising the Executive delivery on performance and resources and ensuring that the lines of responsibility between the different FSA committees are clear.

#### Issue

3. In response to the Board Effectiveness Review, we have taken some time to carefully consider how the Business Committee fits within our overall governance and the role it should play to support the Board with its overall responsibilities.

4. We have reviewed the Terms of Reference for the Board itself, the Audit and Risk Assurance Committee and the current Business Committee. In doing so, we wanted to ensure there was clarity on what the Business Committee covers, that it complements and does not duplicate the areas covered by the ARAC and that it does not include matters which would be more appropriately covered in the main Board discussion.

5. The purpose of ARAC is oversight of the strategic processes for risk management, the high-level control and governance framework and effectiveness in practice and leads on the planned activity and results of regulatory audits and internal and external audit. The Terms of Reference for ARAC are included at **Annex 1** and the current Terms of Reference for the Business Committee are included at **Annex 2**.

6. The Business Committee exists to provide appropriate high-level oversight of financial and operational matters at Board level and supports the translation of policy into effective delivery of results.

7. In recent years, there have been examples of where the Business Committee has strayed into areas better suited to the main Board agenda. It is important the Business Committee sticks to its core agenda which is to:

- a. Approve the annual business plan and maintain oversight of major resources decisions in line with that plan
- b. Scrutinise the performance information, including operational performance, use of resources – people and financial – relating to the FSA
- c. Identify and monitor operational and delivery risk in delivery of the annual business plan

8. In practice, the Business Committee will receive the following reports to enable it to discharge its duties:

- a. Performance and Resources Report
- b. Annual Budget allocation
- c. Annual Business Plan
- d. Oversight of change portfolio and projects
- e. Estates Strategy
- f. People Plan
- g. Annual Review of NFCU

9. Items outwith these topics which have become established as part of the Business Committee will be moved to the main Board agenda. This will include topics such as Local Authority performance, animal welfare and regulated products. We also expect Board agendas will continue to need sufficient time to fully consider new priorities including Retained EU law and Precision Breeding.

10. Resetting the agenda between the Board and Business Committee will bring some advantages: Wales and NI Food Advisory Committees will have the opportunity to scrutinise a

wider range of topics, and stakeholders and members of the public will be able to ask questions on topics moved from the Business Committee to the Board.

11. Given the expanded agenda for the Board meeting and the trend towards increasing Board business, commensurate with the increased in FSA responsibilities post EU Exit, we propose that the Business Committee is held on a separate day to the main Board meeting. This will create additional space and time for the Board to discuss agenda items, while also allowing sufficient separate time to effectively scrutinise and hold to account the Executive on its performance, operational delivery and use of resources (people and money).

12. Focussing the scope of the Business Committee means it is likely that much of this scrutiny will relate to issues that are commercial and in confidence and/ or related to individuals. To encourage full scrutiny of these operational and financial areas, we therefore recommend that the Business Committee is not held in public. In order to preserve transparency a Report will be shared on matters discussed to the Board and will be published alongside Board papers (as is usual practice for ARAC). We will also publish all Business Committee papers unless commercially or people sensitive. The Business Committee will be encouraged to escalate issues it feels fit to the main Board.

### **Discussion**

13. A draft Terms of Reference for the Business Committee is attached at Annex 3. In effect, little has changed from the current Terms of Reference with it continuing to be a body given delegated functions by the Board. There is no change in status, the main changes are in the new Committee's composition and how and when it meets.

14. The changes being proposed are that the Business Committee will:

- consist of a minimum of six FSA Board members, with one being from Northern Ireland or Wales
- be chaired by the Deputy Chair of the FSA Board
- have a narrowed scope from that of the current Business Committee with some items reverting to the Board
- meet quarterly and will not be held in public
- provide a report to the quarterly FSA Board to be published along with the Board papers.

### **Conclusion**

15. The Board is asked to:

- note the proposals set out in this note
- if agreed, to agree to implement the changes from March 2023.

## **Annex 1: Terms of Reference for the FSA Audit and Risk Assurance Committee**

(To be agreed by the Board December 2022)

### **Purpose**

The Audit and Risk Assurance Committee is an advisory Committee of the FSA Board with no executive powers. It is responsible for reviewing, in a non-executive capacity, the

comprehensiveness and reliability of assurances on governance, risk management and the control environment.

The Audit and Risk Assurance Committee will approve the Annual Reports and Accounts (ARAs) on behalf of the FSA Board, with the recommendation that the Accounting officer sign the accounts on approval. It shall additionally have responsibility for reviewing the integrity of financial statements.

### **Membership**

A minimum of four Members of the FSA Board appointed by the FSA Chair under delegated powers following consultation with the Committee Chair. At least one of those appointed will be a Board Member for Wales or Northern Ireland.

The term of appointment will normally be coterminous with an individual's term of appointment to the FSA Board and will automatically cease if an individual ceases to be a Board Member.

At least one of the Committee members should have recent and relevant financial experience.

All new members will be provided with induction training and the FSA will provide for any additional development which is deemed necessary for the member to fulfil their role on the Committee. The Chair of the Audit and Risk Assurance Committee will hold an annual review with each member and any training or development needs will be taken forward with the agreement of the Chair and Accounting Officer.

### **Committee Chair**

Appointed from the membership of the Committee by the Chair of the FSA under delegated powers. The term of appointment will normally be coterminous with an individual's term of appointment to the FSA Board.

### **Co-option**

The Committee may co-opt additional members (whether members of the FSA Board or not) for a period of up to one year to provide specialist skills, knowledge or experience. Co-opted members will have a right to speak, but not vote. Co-opted members will not be included in any calculation of the quorum.

### **Quorum**

Three Non-Executive Board Members.

### **Attendance**

The Chief Executive, as Accounting Officer, the Director of Finance and Performance, the Head of Planning and Performance, the Head of Audit Assurance, a representative of FSA Directors responsible for audits of Official controls (regulatory audits) in England, Wales and Northern Ireland and a representative of the external auditors would normally be invited to attend. Directors and other officials will be invited to attend as required.

### **Reporting**

The Audit & Risk Assurance Committee Chair will provide the Chair of the FSA and the Board with a written update on the key elements of Committee meetings. The Audit & Risk Assurance Committee will report formally in writing to the Board, annually, to support the finalisation of the accounts and the Governance Statement and to update the Board on the work of the Committee, Internal and External Audit and any areas requiring specific attention.

## **Meetings**

The Audit & Risk Assurance Committee will meet at least four times a year. The Chair of the Committee will convene additional meetings, as necessary. The Committee has the right to sit privately without any non-members present for all or part of a meeting.

Additionally, the members of the Committee will meet with the Head of Audit Assurance and, separately, the External Auditors, annually, in closed meetings when the efficacy of the processes, trust, co-operation and any other issues can be discussed, and future action agreed. The FSA Chair, the Board or the Accounting Officer may ask the Audit and Risk Assurance Committee to convene further meetings to discuss specific issues on which they want the Committee's advice.

## **Responsibilities**

The Audit & Risk Assurance Committee will advise the FSA Board and Chief Executive on:

1. The strategic processes for risk management, the high-level control and governance framework and the effectiveness of its operation in practice;
2. The contents of the Governance Statement;
3. The accounting policies, the accounts, and the annual report of the FSA, including the judgements used in producing the accounts, the adequacy of disclosures, the process for review of the accounts prior to submission for audit, levels of error identified, and management's letter of representation to the external auditors;
4. The effectiveness of the design and operation of financial systems and controls;
5. The planned activity and results of , regulatory audits, internal and external audit and the results of other, external assurance reports;
6. The resourcing and effectiveness of the internal audit and regulatory functions;
7. Provide independent scrutiny of the audit process of the Local Authority audit system;
8. The adequacy of the management response to issues identified by audit activity, including external audit management letters;
9. Assurances relating to the corporate governance requirements for the organisation;
10. Proposals for tendering for either Internal or External Audit services or for the purchase of non-audit services from contractors who provide audit services;
11. Anti-fraud policies and whistle-blowing processes, and arrangements for special investigations; and
12. The Committee's effectiveness having reviewed its own performance, constitution and terms of reference and recommending any changes it considers necessary.

## **Information Requirements**

The Audit & Risk Assurance Committee will be provided with, where appropriate:

1. Any changes to the organisation's Corporate Risk Register that are relevant to the responsibilities of the Committee;
2. The risk management strategy;
3. Management assurance reports, and report on the management of major incidents, 'near misses' and lessons learned;
4. Progress reports from the Head of Audit Assurance summarising:
  - a. work performed (and a comparison with work planned)
  - b. key issues emerging from Internal and Regulatory audit work
  - c. management action in response to issues identified and agreed
  - d. changes to the Audit Assurance plans

- e. any resourcing issues affecting the delivery of Audit Assurance objectives
5. Progress reports from the External Audit representatives summarising work done and emerging findings;
6. External assurance and compliance reports in relation to the FSA's activities;
7. Audit Assurance strategies and annual plans;
8. The Head of Audit Assurance's Annual Opinion and Report;
9. Quality Assurance reports on the Audit Assurance function;
10. The draft accounts of the organisation;
11. The draft Governance Statement
12. Any changes to accounting policies;
13. Proposals to tender for audit functions;
14. Summary of findings of every Audit Assurance report;
15. External Audit's management letter; and
16. A report on cooperation between the FSA auditors and external auditors.

The Audit & Risk Assurance Committee will work with the FSA's Executive Management Team to ensure that the Board can be confident that risk management processes, content, mitigating and recovery actions are appropriate and correctly resourced.

#### Notes

1. The Chair of the Audit & Risk Assurance Committee will have free and confidential access to the Chair and Chief Executive of the FSA whenever appropriate.
2. The Head of Audit Assurance, Regulatory audit leads and the representatives of External Audit will have free and confidential access to the Chair of the Committee.
3. The Committee may procure specialist ad-hoc advice at the expense of the FSA, subject to the cost being agreed by the Chief Executive as Accounting Officer.

## Annex 2: Current terms of reference for the FSA Business Committee

(Agreed by the Board September 2021)

**Purpose:** The Business Committee is a committee to which the FSA Board has delegated functions as detailed below. It exists to provide appropriate high-level oversight of financial and operational matters at Board level and support the translation of policy into effective results.

**Transparency:** It meets in the open so that it is clear to interested parties and the public on what basis it has taken its decisions and what evidence it has taken into account in reaching them.

There are some issues that need to be discussed in private, because they relate to issues that are commercial in confidence, are the subject of live negotiations in which the public interest could be adversely affected or relate to individuals.

**Membership:** All members of the Board are members of the Business Committee. The Chief Executive and members of the Executive Team are also members of the Business Committee up to a number equivalent to the Non-Executive members of the Board excluding the Chair. The Chief Executive will be responsible for determining which members of the Executive are members of the Business Committee.

**Chair:** The Chair of the FSA.

**Quorum:** Five Non-Executive Board Members, of whom one to be one of the Members from Northern Ireland or Wales plus the Chair of the meeting, plus three Executive Team members including the Chief Executive or their nominated deputy.

**Reporting:** The Business Committee will publish its minutes. The Terms of Reference for the Business Committee will be reviewed annually by the Board together along with the Terms of Reference and Standing Orders for the Board.

**Meetings:** The Business Committee shall meet at least 4 times a year.

**Responsibilities:**

The Business Committee will on behalf of the Board:

1. Scrutinise the financial and other performance information relating to the FSA and advise the Chief Executive in the discharge of the Accounting Officer responsibilities.
2. Identify and monitor operational and delivery risks.
3. Approve the annual business plan and maintain oversight of major financial decisions in line with that plan.
4. In private, consider confidential matters relating to the position to be adopted on behalf of the UK in international discussions concerning food and animal feed law.
5. Consider such other matters as may from time to time be delegated to the Business Committee by the main Board.

The Chair may decide that specific issues must be remitted to the Board for decision.

## **Annex 3: Proposed Terms of Reference for the FSA Business Committee**

(To be agreed by the Board December 2022)

**Purpose:** The Business Committee ('the Committee') is a body to which the FSA Board has delegated functions as detailed below. It exists to provide appropriate high-level oversight of operational matters, including performance and use of resources (financial and human resources), at Board level and to hold the Executive to account on delivery of its plans and policies.

**Meetings, Reporting, and Transparency:** The Committee will not be held in public, but a report of each meeting will be included on the agenda for each FSA Board meeting and published so that it is clear to interested parties and the public on what basis it has taken its' recommendations to the Board to approve and what evidence it has considered in reaching them.

There are some issues that need to be discussed in private, because they relate to issues that are commercial in confidence, are the subject of live negotiations or relate to individuals.

**Membership:** A minimum of six Members of the FSA Board appointed by the FSA Chair under delegated powers following consultation with the Committee Chair. At least one of those appointed will be the Board Member for Wales or Northern Ireland.

**Chair:** The Deputy Chair of the FSA Board.

**Quorum:** Three Non-Executive Board Members in addition to the Committee Chair.

**Terms of Reference Review:** The Terms of Reference for the Committee will be reviewed annually by the Board together with the Terms of Reference and Standing Orders for the Board.

**Meetings:** The Committee shall meet at least four times a year. The meetings will be scheduled to ensure that a report and record of each meeting can be submitted to the FSA Board and published at the same time as the public meeting papers.

**Responsibilities:**

The Committee will, on behalf of the Board:

6. Scrutinise the performance information, including operational performance, use of resources – people and financial – relating to the FSA
7. Identify and monitor operational and delivery risks.
8. Approve the annual budget and business plan and maintain oversight of major resources decisions in line with that plan.
9. Consider such other matters as may from time to time be delegated to the Committee by the main Board.

## **ANNEX C**

**Proposed Standing Orders for Food Standards Agency Board Meetings** (To be agreed by the Board December 2022)

**Preamble**

1. These Standing Orders apply to all Committees exercising powers or functions delegated by the Board (currently the Business and Audit and Risk Assurance Committees). They do not apply to the Scientific Advisory Committees.
2. Unless otherwise stated, any action required by these Standing Orders to be undertaken by the Chair may, in his/her absence, also be undertaken by the Deputy Chair.
- ~~3. Any reference to a Board meeting means an Open Board meeting and a Business Committee meeting, unless otherwise stated.~~

**Date and Time of Meetings**

4. The FSA Chair (Chair) shall, by the end of March, annually determine the dates, times and places of ordinary Open and Business Committee meetings for the year following, but the Board shall meet at least four times in each calendar year. The Chair may re-arrange the date, time and place of any ordinary Board meeting, convene an additional meeting or cancel any meeting where there are no matters for decision or discussion.
5. The locations for Board meetings shall be set so as to ensure that at least one meeting every year is held in Wales or Northern Ireland.
6. Any Board meeting may be conducted wholly or in part by electronic means including by video conference, an internet video facility or telephone conference.
7. The location of a meeting held by electronic means shall be deemed to take place where the largest group of those Board members participating is assembled or, if there is no group which is larger than any other group, where the Chair of the meeting is located.

**Agenda**

8. The Board Secretary shall send an agenda for each Board meeting by email and/or by post to every Board member at least ten clear working days before the date of the meeting or, in the event of urgency, at the earliest possible opportunity.
9. Failure to send or deliver an agenda to any Board member shall not invalidate the proceedings.

10. A copy of the agenda for each Board meeting shall be published on the FSA website at least three clear working days before the meeting.

#### **Business to be Transacted**

11. The Board Secretary shall maintain a list of future agenda items for the year ahead. This list shall be compiled following discussion with the Chair, other Board members and the Chief Executive. However, the Board Secretary shall additionally consult the Chair and the Chief Executive on the business to be transacted at each meeting prior to the distribution of the agenda.

12. Any Board member may request the Chair to consider including an item on an agenda provided he or she has given at least 15 clear working days' notice before the meeting to the Chair or the Board Secretary.

13. Only the business specified in the agenda for the meeting may be transacted save that business of an urgent nature that is not included in the agenda may also be discussed and determined at any meeting.

#### **Chairing of Meetings**

14. Board meetings shall be chaired by the Chair of the FSA or, in his/her absence, the Deputy Chair. In the event that neither the Chair nor Deputy Chair is present, the Board members present may appoint one of their number to chair the meeting. The decision of the meeting Chair on any question of procedure raised at a meeting shall be final.

#### **Quorum**

15. The quorum for Board meetings shall be the Chair of the meeting plus five other Board members of whom one must be one of the members for Wales or Northern Ireland.

16. If there is no quorum within 30 minutes of the scheduled start of a Board meeting, or if the meeting becomes inquorate during the proceedings, the meeting shall be adjourned and the business postponed either to: a. a date, time and place fixed by the Chair of the meeting at the adjournment; or b. the next ordinary Board meeting.

17. Where Board members are not able to attend a meeting, they shall send their apologies in advance to the Board Secretariat. A Board member shall not be absent from more than two consecutive meetings without the prior agreement of the Chair.

#### **Interests to be Declared at Meetings**

18. A Board member shall notify the Chair (or the Deputy Chair in the case of the Chair having an interest) in advance of the meeting of any interest that they may have in any agenda item and declare the nature of the interest at the meeting before the matter is discussed. In accordance with the provisions of the Code of Conduct, the Chair shall decide whether the Board member may remain present at the meeting for the discussion on that item and any decision thereon.

19. The Board Secretary or such other person present to take the minutes of the meeting shall record the declaration of interest, its nature and whether the individual left the room in the minutes of the meeting.

#### **Minutes of Board Meetings**

20. The Board Secretary shall arrange for minutes to be prepared for all Board meetings. The minutes of a meeting shall be confirmed as a correct record at the next following Board meeting. When the next meeting is an additional meeting, the minutes may be confirmed at the next ordinary Board meeting. Once confirmed, the minutes are conclusive evidence of the decisions of the Board.

21. A copy of the minutes of Board meetings shall be published on the FSA website.

#### **Decisions and Voting**

22. Decisions of the Board shall be taken by such method as the Chair chooses to ascertain the views of those present at the meeting. Where any matter is voted upon, it shall be decided by a majority of those present.

23. In the event that a vote is tied, the Chair shall have a second or casting vote.

24. Any Board member may request that his or her vote or abstention is recorded in the minutes.

25. The Board Secretary or such other person present to take the minutes of the meeting shall record all Board decisions in the minutes of the meeting.

#### **Written Resolutions**

26. A written resolution signed by at least three quarters of appointed Board members shall be as valid as if it had been agreed at a Board meeting. Such a resolution may consist of several documents in the same form each signed by one or more Board members including electronic signatures.

#### **Delegation of Powers and Inter-Sessional Work**

27. The Board has authorised the Chair to discharge such powers of the Board as he/she deems necessary in order to deal with the business of the Agency between Board meetings.

Where, in the opinion of the Chair, significant operational or other matters require approval by the Board between meetings papers shall be circulated for approval by written resolution. Where, in the opinion of the Chair, full Board consideration is not justified or when circumstances make it impractical or unnecessary to consult the Board collectively, the Chair shall report to the Board at the earliest opportunity on any action that he or she may take.

#### **Variation or Suspension of these Standing Orders**

28. The Board shall review these Standing Orders annually, along with the terms of reference for the Board and each of its Committees, to ensure their continued effectiveness.

29. These Standing Orders shall not be varied or suspended unless a majority of those present at the meeting where the matter is considered so agree.

### **Committees of the Board Which Exercise Powers or Functions On Its Behalf**

#### **Application to Committees - General**

30. Standing Orders 7, 9, ~~40~~, 11, ~~44~~, ~~45~~, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 shall apply to Committees with any necessary modifications and subject to the provisions of Standing Orders 31 to 36 below.

#### **Date and Time of Meetings**

31. Each Committee shall annually determine the dates, times and places of its ordinary meetings for the year ahead but shall meet at least once each year or on such number of occasions as the Board might specify in terms of reference for each Committee.

32. The Committee Chair may re-arrange the date, time and place of any ordinary meeting, convene an additional meeting or cancel any meeting where there are no matters for decision.

## Agenda

33. The Board Secretariat shall send an agenda for each Committee meeting by email and/ or by post to every Committee member at least five clear working days before the date of the meeting or, in the event of urgency, at the earliest possible opportunity.

## Chairing of Meetings

34. The Chair of each Committee shall be appointed by the FSA Chair for such term as he/she may determine, but ordinarily to run concurrent with the remainder of a Board member's term of office.

35. In the absence of the Chair, the other Committee members present shall appoint one of their number to chair the meeting.

36. Business Committee meetings shall be chaired by ~~the Chair of the FSA or, in his/her absence,~~ the Deputy Chair. In the event that ~~neither the Chair nor~~ Deputy Chair is not present, the Board members present may appoint one of their number to chair the meeting. The decision of the meeting Chair on any question of procedure raised at a meeting shall be final.

## Membership

37. Membership of each Committee shall be in accordance with the terms of reference for each Committee.

~~38. All members of the Board are members of the Business Committee. The Chief Executive and members of the Executive Team are also members of the Business Committee up to a number equivalent to the Non-Executive members of the Board excluding the Chair.~~

## Quorum

39. Unless otherwise stated the quorum for any Committee meeting shall be a minimum of three or such greater number as the Board may state in the terms of reference for the Committee.

~~40. The quorum for the Business Committee shall be five non-Executive members, of whom one to be one of the members from Northern Ireland or Wales plus the Chair of the meeting, plus three Executive Team members including the Chief Executive or their nominated deputy.~~

## Definitions

**Agenda** – means the reports or papers for the meeting together with the cover sheet listing the items for consideration at a meeting

**Clear Working Days** – excludes the day on which the agenda is distributed, the day of the meeting, Saturdays, Sundays and Public Holidays.

# ANNEX D

## Terms of Reference For the FSA Board (Agreed by the Board September 2021)

**Purpose:** The Board is established by the legislation that established the FSA and constituted in line with the Food Standards Act 1999. It exists to represent the public interest and ensure that the organisation puts consumers first, to set strategy for the FSA, and to take major decisions on policy and key issues of principle, informing advice given to Ministers in Westminster and Wales and Northern Ireland. The Board has overall collective responsibility for the activities of the Food Standards Agency in England, Wales and Northern Ireland, and for ensuring that the FSA discharges its statutory duties to protect public health and consumers' interests in relation to food.

The Board also, through the Chair, appoints the Chief Executive and holds her/him accountable, and supports the Chief Executive in the discharge of her/his role as Accounting Officer.

**Devolution:** The interests of Wales and Northern Ireland are taken into account in Board decisions and deliberations through advice from the Food Advisory Committees of these countries. Board papers are normally the subject of FAC consideration prior to their consideration in the Board.

**Delegation:** The Board may delegate to Committees certain functions mainly associated with implementation and corporate governance of the Agency. Committees currently constituted under this power are the Business and Audit and Risk Assurance Committees.

**Transparency:** The Board meets in the open so that it is clear to interested parties and the public on what basis it has taken its decisions and what evidence it has taken into account in reaching them unless there are particular reasons why something cannot be considered in public.

Committees of the Board will also be held in public or will have their minutes published - unless there are particular reasons why specific issues cannot be considered in public.

**Membership:** In line with the 1999 Food Standards Act the Board will consist of a Chair, Deputy Chair and between 6 and 10 other members of whom 1 shall be appointed by the Welsh Government and 1 shall be appointed by the Department of Health for Northern Ireland; the others shall be appointed by the Secretary of State.

**Chair:** The Chair and Deputy Chair of the FSA are appointed by Ministers in England, Wales and Northern Ireland acting jointly.

**Quorum:** Five Board Members, of whom one to be one of the Members from Northern Ireland or Wales plus the Chair of the meeting.

**Attendance:** Members of the Executive shall also be required to attend and participate in Board meetings.

**Reporting:** The Board will approve an annual report of our activities and performance which will be laid before the Westminster Parliament, the Welsh Government and the Northern Ireland Assembly.

**Effectiveness:** The Board will undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual members in line with best practice outlined in the Corporate Governance in Central Government Departments: Code of Practice 2017.

**Meetings:** The Board shall meet at least 4 times a year.

As part of their meetings the members of the Board will meet three times each year in closed session to discuss issues related to governance, the performance of the Chief Executive, and the functioning of the relationship with the Executive from the perspective of the Board.

### **Responsibilities:**

The Board:

- sets strategy, strategic priorities and strategic outcomes;
- identifies and monitors strategic, reputational and corporate risk; determines the FSA risk appetite;
- takes major decisions on the regulatory and controls framework;
- takes major decisions on policy and key issues of principle;
- informs advice to Ministers, and on more prominent issues provides advice to Ministers;
- has collective responsibility for FSA activities and discharge of our statutory duties;
- through the Chair, appoints the CEO and holds him/her accountable; and
- approves the Annual Report.