



Background:

Revised Terms of Reference, amalgamating previous ‘Standing Orders’ and Terms of Reference, to reduce duplication.

The Terms of Reference were first approved on 23 February 2012, as part of the process to enact the Budget Responsibility and National Audit Act 2011, which took full effect in April 2011. They were revised in July 2012 reflecting a change in scope of Remuneration and Nominations Committee.

This revision brings together the Terms of Reference and Standing Orders into a single document.

Approved by Board in January 2015¹.

Updated to reflect adoption of seal in March 2015.

Role

1 The role of the National Audit Office (“NAO”) Board is to support the Comptroller and Auditor General (“C&AG”) by advising and monitoring him/her, as it thinks appropriate, in the exercise of the C&AG’s functions. The Board is also responsible for carrying out specific NAO functions which are particularised in the section headed ‘Responsibilities’ hereafter.

Members

2 The Board shall be made up of five non-executive members, one of whom will be the Chair, and four executive members of which the C&AG shall be one. However, for the purpose of these Terms of Reference the term “executive members” shall refer to the employee members and not the C&AG, unless specifically stated.

¹ In March 2018, the board approved a change to the frequency of meetings (from 8 meetings per year to 7) and this document as been updated to reflect this change.

Non-executive members (of which one shall be Chair)	5
Executive (“employee”) members	<u>3</u>
Total members	9

3 The executive members shall include a professional finance director who has responsibility for the NAO’s financial management.

4 The balance of skills represented at Board level will be reviewed annually by the Board to ensure skills relevant to the NAO are represented. The reviews will include leadership, change management; strategy; audit; performance measurement; process improvement; finance; HR; IT and communications.

Appointments

5 The procedure for appointing Board members will be formal, rigorous and transparent. Appointments will be made on merit and against objective criteria.

C&AG

6 The C&AG is appointed by the Queen through an address to the House of Commons. The Prime Minister, with the agreement of the Chair of the Public Accounts Committee, moves the motion for the address.

7 The C&AG may hold office for up to ten years and may not be re-appointed thereafter.

Chair

8 The Chair is appointed by the Queen through an address to the House of Commons. The Prime Minister, with the agreement of the Chair of the Public Accounts Committee, moves the motion for the address.

9 The Chair is initially appointed for three years. The Chair may be reappointed for one additional three year term only.

Non-Executive Members

10 Non-executive Board members are appointed by the Public Accounts Commission, upon the recommendation of the Chair, for an initial term of up to three years. The Public Accounts Commission may appoint the person nominated by the Chair or require the Chair to recommend other individuals until the vacancy is filled. Non-executive Board members may be re-appointed for one additional term only. The recruitment process may include a pre-appointment hearing, and this will be agreed with the Public Accounts Commission in advance of any recruitment process.

Executive Members

11 Executive members are appointed by the non-executive members upon the recommendation of the C&AG for a renewable period of 12 months. There will be no limit upon the number of times such an appointment can be renewed.

Resignation

12 The C&AG may resign by giving written notice to the Prime Minister.

13 The Chair may resign by giving written notice to the Prime Minister.

14 A non-executive member may resign by giving written notice to the Public Accounts Commission.

15 An executive member may resign by giving written notice to the non-executive members.

Chair

16 The Chair shall be a non-executive member of the Board. The Senior Independent Member (who shall also be a non-executive member of the Board) may deputise for the Chair in cases of extreme emergency.

Removal

17 The Queen may remove the C&AG on an address to both Houses of Parliament.

18 The Queen may remove the Chair on an address to both Houses of Parliament.

19 The Public Accounts Commission may remove a non-executive member by giving written notice in any of the circumstances set out in paragraph 19a) below.

20 The non-executive members may remove an executive member by giving written notice in any of the circumstances given below:

a. If the member:

- Has been absent from Board meetings without the Board's permission for a period of more than three months;
- Is the subject of a bankruptcy restrictions order (or interim order);
- Has had their estate sequestrated in Scotland or, under Scots Law, has made a composition or arrangement with, or granted a trust deed for, their creditors;
- Is unfit to continue the appointment because of misconduct;
- Has failed to comply with the terms of the appointment; or

- Is otherwise unable, unfit or unwilling to carry out the member's functions.

21 The appointment of an executive member shall terminate when the member ceases to be an employee of the NAO or at the end of the period specified by the non-executive members in the terms of the member's appointment.

Meetings

22 The Board shall normally meet 7 times in each year with other meetings as necessary.

23 Meetings of the Board shall be called by the Secretary of the Board ("the Secretary") at the request of the Chair or at the request in writing of any three members. Any Board member may request the Chair to convene a meeting at any time.

24 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 by the Secretary to each member of the Board at least 5 working days before the date of the meeting.

25 Any member may request that an item is included on the Agenda. Such items are to be brought to the notice of the Chair and C&AG prior to finalisation of the agenda.

26 A special meeting of the Board may be called at any time by the Chair or at the request in writing of any three members. This meeting may be called with less than 5 working days' notice if the Chair so directs, on the ground that there are matters demanding urgent consideration.

27 No resolution may be rescinded or varied unless its reconsideration appears as a separate item on the agenda of a subsequent meeting, thus, it cannot be rescinded or varied under Matters Arising.

28 Staff of the NAO may be invited to attend Board meetings.

29 Board members may attend meetings of any of the Board's Committees subject to the procedures set out in the respective Committees' Terms of Reference.

Quorum

30 The quorum necessary for the transaction of business shall be **five members** the majority of which must be non-executive members. A duly convened meeting of the Board at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Board. If the meeting is inquorate, and no formal business can therefore be conducted, the Chair may subsequently call a special meeting to deal with the remaining business.

31 A member shall be entitled to participate in Board meetings by telephone conference call and shall be counted in the quorum if participating in the meeting in this manner.

32 A meeting must remain quorate for its full duration. Should members arrive late or leave for any reason, quoracy must be maintained. If the meeting is or becomes inquorate, Board decisions can no longer be made and any discussions shall be informal only. The Chair may decide to call a Special meeting to undertake the remaining business.

When non-executive members are not in the majority

33 In the event that non-executive members are not in a majority, the Chair may request the C&AG to nominate an executive member who will take on an observer role for the remainder of the meeting or until such time as quoracy can be restored by the arrival of an additional non-executive member. (See quoracy table attached).

34 The Chair may ask the C&AG to nominate a second executive member to take on an observer role if this is necessary in order to achieve quorum.

35 To ensure the fullest consideration of matters, the Chair may ask any executive member attending as an observer for their opinion on a matter. However, the opinion of an executive member attending as an observer shall not be incorporated into the formulation of Board decisions.

36 In the event of a vote of Board members, an executive member who is attending in an observer capacity shall not be entitled to vote.

Chair's Action

37 The Board shall authorise the Chair, to act on behalf of the Board between meetings, in specific circumstances.

38 The Board empowers the Chair to act on its behalf when dealing with routine actions which would not normally merit an Agenda item at a Board meeting, for example the signing of routine documents on behalf of the Board.

39 Occasionally, the Chair will need to act on behalf of the Board between meetings on more weighty issues. Where possible authority will be given by the Board at a prior Board meeting and minuted accordingly to authorise the Chair's action(s).

40 Exceptionally, the Chair's action may be required on an urgent matter, where delay would seriously prejudice the NAO. In such circumstances the Secretary will ensure that the Chair's action is reported to the next Board meeting and recorded in the minutes of that meeting by way of ratification. In such circumstances, the Board shall fully accept corporate responsibility for any action taken.

Attendance at meetings

41 Members shall have the right to attend Board meetings and may invite other individuals to attend all or part of meetings as appropriate, subject to notification to the Secretary and/or Chair save that such individuals may be requested to leave the meeting by the Chair at his/her volition or at the instigation of a member.

Secretarial support

42 The Board shall appoint a Secretary who will carry out the duties specified in "**Meetings**" above and shall, in addition, be responsible for ensuring that the agendas of the Board and its Committees align and that appropriate committee matters are escalated for inclusion on Board agendas.

- 43 The Secretary's performance shall be appraised by the Chair.
- 44 The Secretary shall maintain the corporate seal and register of sealings.

Minutes and papers

- 45 Where possible, items for discussion by the Board should be supported by a covering paper and report to provide the necessary information for debate. All such papers or reports should have a proposed recommendation or resolution for the Board to consider.
- 46 Verbal reports should, where necessary, provide a clear proposal for the Board to consider as a formal decision or resolution.
- 47 The Secretary shall minute the proceedings, resolutions and decisions and further actions required, together with the names of those present and in attendance
- 48 The Board shall ensure (via the Board Secretary) that a copy of the approved minutes of every meeting of the Board shall be placed on the NAO external website for a minimum period of 12 months; subject to the consideration of any sensitive items which should be withheld under the Freedom of Information Act.
- 49 The Chair and Secretary shall together identify agenda items which will be classified as confidential. All minutes determined by the Board to be confidential, will not be made available for public inspection.
- 50 At every meeting of the Board, the minutes of the last meeting shall be an agenda item save in cases where the members present decide otherwise.
- 51 Minutes shall be taken of those parts of meetings (Part 2 meetings) from which the Secretary or executive members have withdrawn. However, these will be recorded separately from the minutes taken by the Secretary. The Secretary and executive members who have withdrawn from Part 2 meetings shall not be entitled to see the minutes of that part of the meeting.
- 52 The Chair will determine which Agenda items are to be Part 2 matters at the commencement of the meeting and inform the meeting accordingly. Only items so notified shall be discussed within the Part 2 meeting.
- 53 Board papers will be circulated to members at least 5 working days in advance of the meeting at which they will be presented.
- 54 Board papers shall be prepared in accordance with the NAO internal guidance on Board and Committee papers.
- 55 A schedule of NAO Board Information Requirements and Regular Items for Consideration by the Board are attached at Annexes 1 & 2.

Conflict of Interest

56 All board members will complete a conflict of interest form on joining the board and at other times as required.

57 The Secretary shall ascertain, at the beginning of each meeting, the existence of any conflicts or potential conflicts of interest and shall record them in the minutes.

58 If any board member has reason to believe a conflict of interest situation has arisen or may arise, this should be drawn to the attention of the Board Chair and/or the board email list as soon as possible.

Declarations of interest

59 Where a Board member has a financial interest in the supply of work or goods to, or for the purposes of, the NAO; any contract or proposed contract concerning the NAO; or any other matter relating to the NAO, it shall be the responsibility of that member to declare their interest. They shall not take part in any discussion, nor form part of the quorum, nor vote on the relevant matter and the Chair may require them to withdraw from the meeting until the Agenda item giving rise to the conflict or potential conflict has been concluded.

60 It is the duty of each member to also disclose if a conflict or potential conflict arises in relation to the dealings or interests of his/her spouse, partner and close family members.

61 Upon consideration by the Board, the duty of disclosure may also be extended to include non-financial personal interests, such as membership of other public bodies and institutions; trusteeship of a trust where the member, or other person connected with them, may be a beneficiary.

62 A Register of Members' Interests shall be held by the Secretary.

63 When a Board member makes a declaration of interest it shall be recorded in the minutes by the Secretary.

64 The Secretary shall advise the Chair before a meeting and draw the matter to the attention of the member if, based on a declaration in the Register of Members' interests, there appears to be a conflict or potential conflict arising as a result of the member's personal or financial interest or otherwise, in relation to an Agenda item.

65 When a member has or may have a conflict of interest, the Board as a whole shall decide what procedure should be followed to safeguard the integrity of the Board and the member concerned.

66 Executive members and, where applicable, the Secretary are obliged to withdraw from any part of a meeting which is discussing:

- their own remuneration, conditions of service, promotion, conduct, suspension, dismissal or retirement; or
- the appointment of their successor.

67 When the Board is considering the appointment, remuneration, conditions of service, promotion, conduct, suspension, dismissal or retirement of another executive member more

senior to the executive members of the Board, the executive members shall be required to withdraw if required to do so by the resolution of the other members present.

Conduct

68 The expectations for conduct are set out in the Code of Conduct. These apply to all Board members and all members of Board Committees.

Training

69 Board members should undertake continuous professional development to ensure they maintain the necessary level of skill and expertise. To facilitate this, the on-going training needs of Board members will be considered annually by the Secretary through self-assessment by members and discussion with the Chair. The NAO will make resources available to provide new Board members with a suitable induction and existing members with appropriate on-going training.

Performance evaluation

70 The Board's performance (including the performance of its committees) will be evaluated by the Board on an annual basis. Every third year the Board will carry out an evaluation performed by an independent external consultant.

71 Agreed actions to address any improvements identified will be allocated to named individuals and the board will monitor implementation of actions.

Indemnification

72 Board members are indemnified by the Consolidated Fund for a liability arising from a breach of duty in relation to any audit or examination carried out as part of the C&AG's functions.

Board Committees

73 The Board may establish committees and delegate any of its work to those committees save for those matters reserved for the Board set out in the Schedule of Reserved Matters. The Board will set the terms of reference for its committees which memberships may include non-Board members.

74 The Board shall establish an Audit Committee to advise it on systems of internal control, risk management and corporate governance. The Chair of this Committee will be a non-

executive member of the Board. The members of this Committee shall be non-executive members of the Board.

75 The Board shall establish a Remuneration and Nominations Committee to advise it on the remuneration of employee members. The Chair of this Committee will be a non-executive member of the Board. The members of this Committee shall be non-executive members of the Board.

76 Each of these Committees shall:

- provide a verbal update at the Board Meeting which follows a Committee meeting;
- supply copies of approved minutes of Board Committee meetings held since the last Board meeting; and
- provide an annual report to the Board on its performance during the year.

77 The Board may establish additional Board committees for any purpose or function (other than those assigned elsewhere in statute), and may delegate powers to such a committee, in addition to any powers that the Board may have delegated to the Chair of the Board or to the C&AG.

78 The Board shall determine the numbers of members and terms on which the members serve on and are removed from committees.

79 Duties and responsibilities that the Board cannot delegate are set out in the Schedule of Reserved Matters.

80 The Board will assess the performance of each of its Committees annually as part of the Annual Board Evaluation.

81 A Board committee may delegate functions (including functions delegated to it) to a sub-committee. However, the delegation of a function shall not prevent the committee from carrying out the function itself.

82 An employee of the NAO who is not an executive member of the Board may be a member of a committee or sub-committee.

83 A person who is neither a Board member nor an NAO employee may be a member of a committee or sub-committee as long as no functions of the Board are delegated to that committee or sub-committee.

84 The Board may also delegate functions to any of its members or NAO employees, save those set out in the Schedule of Matters Reserved. However, the delegation of a function shall not prevent the Board from carrying out the function itself.

Senior Independent Board Member

88. The Chair shall nominate a non-executive member to be the Senior Independent Non-executive Board Member who shall:

- Meet at least annually with the other non-executive members, in the absence of the Chair to appraise the annual performance of the Chair;
- Receive reports from whistleblowers outside of the normal line management chain.

Disclosure

85 In addition to the minutes of the Board (non-confidential matters only) the Board's Terms of Reference and membership shall be available on the NAO website.

86 The NAO Annual Report will describe the role, responsibilities and composition of the Board and its committees and how the annual appraisal of the Board was carried out. The number of meetings of the Board, the attendance record of members and fees paid during the year will also be disclosed in the Annual Report.

Disagreements between the C&AG and the Chair

87 In the event of disagreement between C&AG and Chair of the Board, the matter in dispute shall be referred to the members in Board meeting for resolution.

Validity of proceedings

88 The validity of proceedings of the Board or any committee or sub-committee shall not be affected by any vacancy or any defective appointment of any of its members.

Supporting documents

89 The Schedule of Reserved Matters identifies those matters which cannot be delegated and which are reserved for decision by the Board.

Authority

90 The Board may do anything calculated to facilitate, or incidental or conducive to the carrying out of any of the NAO's functions.

Responsibilities

General responsibilities of the Board

91 With the agreement of the C&AG and in a manner consistent with the C&AG's role as Accounting Officer, the Board will collectively provide leadership in the NAO and:

- Take forward the NAO's agreed strategic aims and objectives
- Advise on the allocation of financial and human resources to achieve those aims
- Oversee the management of the NAO's resources and monitor the achievement of performance objectives
- Set the NAO's standards and values
- Maintain transparent systems of governance and internal controls consistent with best practice, and monitor and report on their effective operation in the NAO Annual Report
- Identify and manage risk effectively
- Lead and oversee the process of change, encouraging innovation, and where appropriate enterprise, to enhance the NAO's capacity to deliver
- Conduct its business efficiently and cost-effectively
- The Board will have due regard to succession planning and will satisfy itself that plans are in place to maintain an appropriate balance of skills and experience on the Board, its Committees and within the NAO

92 The Board should satisfy itself that it is supplied in a timely manner with information in a form and quality appropriate to enable it to discharge its duties in respect of all the NAO's activities. Such information should include reports of:

- Monthly management information relating to the actual use of financial and human resource as well as periodic in-year forecasts of the expected outturn against financial budgets of resource and capital expenditure, of income and of salient balance sheet information;
- Progress in relation to outputs and outcome (performance targets); and
- The identification and management of risk.

Specific sole responsibilities of the board

93 The Board is responsible for:

- Preparing an estimate of NAO's use of resources for each financial year which includes the resources required by the C&AG for his/her functions
- Making rules for the purpose of regulating its own procedures
- Making a recommendation to the Public Accounts Commission regarding the appointment of an external auditor to the NAO for each financial year
- Considering and approving proposals for any NAO approved services that the C&AG wishes to provide (and any subsequent changes to the approved programme) and

determining the maximum amount of resources that the C&AG may require for those services

- Providing resources to the C&AG for the carrying out of his/her functions as the C&AG requires
- Employing staff to assist in the carrying out of the C&AG's functions
- Procuring services for the purposes of C&AG's functions
- Holding documents or information acquired in the course of, or otherwise for the purposes of C&AG functions: and
- Keeping records in relation to C&AG functions.

Responsibilities arising from the Code of Practice

94 The Code of Practice in relation to the relationship between the C&AG and the Board identifies the following further Board responsibilities:

- To consider the C&AG's draft programme of statutory work
- In the event that the C&AG needs more resources to deliver the programme of statutory work, the Board will consider the C&AG's proposals as to how the work will be funded and shall approve a course of action that provides the C&AG with the resources he/she needs for statutory work
- In the event that the C&AG needs more resources to deliver the programme of NAO approved services, the Board will consider the C&AG's proposals as to how the work will be funded and shall agree a way forward
- Consider the C&AG's proposals for a fees charging scheme and approve it after making any modifications that the Board considers appropriate
- Submit the fees charging scheme to the Public Accounts Commission for consideration and approval
- Charge fees, in accordance with the fees charging scheme, for audits carried out by the C&AG, and
- To comment in public on the work of the NAO only in general terms and not to make comments on matters of audit opinion and judgement which are reserved to the C&AG.

Specific joint responsibilities

95 Jointly with the C&AG, the Board is also responsible for:

- reviewing and revising as appropriate the strategy for national audit functions on an

annual basis: The preparation of a strategy for the delivery of the national audit functions (meaning NAO and C&AG functions), which includes a plan for the use of resources for those functions and specifies the maximum amount of resources to be provided by the NAO for the C&AG's functions. The Board and C&AG shall review the strategy (and revise it as appropriate) at least once a year. The C&AG and the Board Chair shall jointly submit the strategy to the Public Accounts Commission for approval or revision. The Board and C&AG shall each give effect to the strategy

- as soon as practicable after the end of each financial year, the preparation of a report in respect of the work carried out on the national audit functions (meaning NAO and C&AG functions) during the year and the submission of the report to the Public Accounts Commission
- the preparation of a Code of Practice dealing with the relationship between the Board and the C&AG. The Code must reflect the principle that the C&AG has complete discretion in carrying out his/her functions, including determining whether to carry out an examination under Part 2 of the National Audit Act 1983 (c.44) and as to the manner in which any such examination is carried out (subject to any other statutory provision). This principle is subject to any limitations that are agreed between the Commission, the Board and the C&AG, and
- regularly reviewing the Code of Practice and revise it as appropriate. In preparing or revising the Code, the NAO must consult the Treasury. The Board and C&AG must also consider any proposals for revisions of the Code made by the Public Accounts Commission from time to time.

Annex 1: Board Information Requirements

NAO management will ensure that all information relevant to the Board's discharge of its responsibilities will be provided promptly to the Board.

The Board will be provided with:

- A written report from the Comptroller and Auditor General at each of its meetings; and
- Feedback from Public Accounts Commission.

As and when appropriate the board will also be provided with:

- Approved minutes of Board Committee meetings held since the last Board meeting
- Key strategic and planning documents
- NAO objectives and reports of performance against them
- C&AG statutory work plan
- C&AG NAO approved services work plan
- Annual resource and capital expenditure budgets and any subsequent material revisions
- Reports on financial performance against budget, including forecast of outturn
- Business cases for significant new corporate projects
- Reports on the allocation and cost of human resources
- NAO draft annual report including draft accounts
- Plans and progress reports on major capital projects
- Proposals to begin corporate projects or enter into contracts above £500,000 in lifetime costs, and other smaller projects and contracts that are strategically significant to the NAO
- Progress updates on key projects with strategic significance
- Key policy documents including but not limited to Code of Conduct, Health and Safety Policy, Environmental Policy, Diversity Policy and Whistleblowing Policy
- Significant changes in accounting policies or practices
- Reports on significant breakdowns in internal controls
- Audit Committee recommendations on the appointment, reappointment or dismissal of internal and external auditors
- Annual report of the Audit Committee

- Annual report of the Remuneration & Nominations Committee
- Treasury policy
- Notification of use of Chair's action
- Remuneration policy for employee members of the Board
- Reports on the views of NAO stakeholders
- Board training needs assessment following the Annual Board Evaluation
- Results of external independent evaluation of the Board's performance undertaken every three years
- Reports on succession planning
- Draft press releases concerning matters decided by the Board
- Proposals on the appointment of key professional advisers
- Reports on any litigation prosecution, defence or settlement
- Terms of reference of Board committees
- Schedule of reserved matters

Annex 2: Regular items for consideration

The following items are recurring agenda items:

- The Board will formally reconsider its terms of reference annually.
- Review and revise as appropriate the strategy for national audit functions on an annual basis.
- The Board will review as and when required the Code of Practice dealing with the relationship between the NAO and the C&AG.

Annex 3: Quoracy Table

For the purpose of this table only (but **not generally**) the C&AG is termed an “Executive” Member

Total number	Non executive members	Executive members	Initially quorate?	Action to restore quoracy
9	5	4	Yes	
8	4	4	No	1 executive member becomes an observer, down to 7 voting members.
8	5	3	Yes	
7	5	2	Yes	
7	4	3	Yes	
7	3	4	No	2 executive members become observers, down to 5 voting members.
6	5	1	Yes	
6	4	2	Yes	
6	3	3	No	1 executive member becomes an observer, down to 5 voting members.
6	2	4	No	No meeting – quoracy cannot be achieved as non-executive member majority would mean only 3 members for meeting