



Interim Office for Environmental Protection

Minutes

Meeting of the Board

Thursday 12 August 2021 - 1.00pm

Via Microsoft Teams

Members in Attendance

Julie Hill MBE	Board Member-designate
Professor Dan Laffoley	Board Member-designate
Dr Paul Leinster CBE	Board Member-designate
Professor Richard Macrory CBE	Board Member-designate
Natalie Prosser	Interim CEO-designate
Dame Glenys Stacey	Chair-designate

Other Attendees

Peter Ashford	Head of Legal
<i>Redacted</i>	Team Leader, Natural Science (item 21.17)
Neil Emmott	Head of Complaints and Environmental Law
<i>Redacted</i>	Team Leader, Scrutiny and Advice (items 21.13 and 21.14)
Louise Jakobsson	Head of Strategy, EIP Monitoring and Reporting
<i>Redacted</i>	Chief of Staff (acting as Board Secretariat)
<i>Redacted</i>	Team Leader, HR and Corporate Services (item 21.16)
Maniv Pathak	Head of Insights and Analysis
Sandy Rowden (from 2.00pm)	Head of Establishing the OEP

21.11 **Apologies for Absence and Declarations of Interest**

There were no apologies for absence or declarations of interest.

21.12 **Minutes and Matters Arising**

The Board **AGREED** the minutes of the meeting held on 1 July and noted that a copy of the minutes is to be published on the OEP's website. The Board confirmed that its preference would be for publication as soon as reasonably practical. **ACTION**

The Interim CEO-designate introduced her report which outlined progress made since the Board's last meeting. Delivery continues at pace, within a context of high resource demand from the recruitment and onboarding of the OEP's permanent staff, and transition of seconded resource. These pressures are unlikely to abate in the short term.

The stable forecast financial outturn of interim OEP was noted. There is unusual uncertainty in the pay forecast, given the number of leavers and joiners expected before year end. There is, however, confidence that the outturn for the year will be close to budget.

Discussions with Defra on OEP's spending review settlement have begun. It is expected that the settlement across government will be one of constraint, but the OEP's base budget in its approved business case is understood to be secure. The Board noted the strategic intent for these discussions set out in the paper. Given uncertainty in some areas of OEP's operational demand and costs, the Board suggested the impact of certain scenarios of significant change could be modelled. **ACTION**

There has been a good amount of interest in the executive director roles advertised, and all heads of function interviews are to conclude in August. Developing a new organisation is proving to be an attraction to candidates. Some concern on location and salary has been reported for the executive roles. The Board sought assurance on the intended legal capacity of the OEP to deal with complex and challenging casework. The OEP will have five permanent lawyers, and an ability to contract additional or specialist expertise as required.

A range of constructive engagements with Ministers and stakeholders were outlined. The Board noted that Ministers had both welcomed the advice given on the draft environmental principles policy statement and asked their officials to engage with OEP on aspects of implementation. The Board requested information on attendees and discussion points at the established OEP stakeholder forum. **ACTION**

The OEP's website launched.

This section has been redacted as it relates to legally privileged advice

The Board noted that the volume of complaints received by Interim OEP remains low. It is anticipated that the volume and complexity of complaints will increase as OEP obtains its substantive functions. The Board commended the helpful approach to complainants adopted to date. It will be important to retain this principle as volumes increase, and to effectively monitor the performance of this function. The importance of the tone and timeliness of responses was noted to be critical to complainant experience.

Identified consultations on which the Interim OEP could give advice had been assessed using the principles and decision tool the Board had agreed. The Board endorsed the results and recommended that mechanisms be developed to garner insight on issues on which the OEP proposed not to respond, to inform the OEP's other functions. **ACTION**

The provisions of the Environment Bill with respect to the OEP had resulted in intense debate in the House of Lords, and amendments had been proposed. It is understood that government is considering its approach to the subsequent bill stages.

The Board noted that discussions had begun on a framework document between Defra and the OEP. It noted that some arm's-length bodies had operated without agreements for a number of years, and that it was very important that the provisions were appropriate.

21.14 **Developing the OEP Strategy**

The Team Leader, Scrutiny and Advice introduced the paper, highlighting the overall approach proposed for development of the OEP's strategy.

The Board considered the success criteria. It encouraged officers to consider the need to emphasise two-way communication within the success criteria, which could be through ensuring the strategy developed is in accordance with the guiding policy.

There are a range of areas where the concepts outlined need to be developed, and material questions to be explored. This includes the balance between activity informed by issue and horizon scanning, and the responsive activity to casework, consideration of the right issues to manage, and the key points where the OEP will have leverage. The capacity for sequential improvement also needs to be preserved.

Subject to consideration of its comments, the Board **AGREED** the success criteria proposed.

The Board noted the staged approach to strategy development proposed. An approach which begins with a broader framework to be further refined is likely to be preferable, to ensure the strategy provides flexibility to respond to learning and events in live operations.

While the organisational design gives some indication of the intended relative capacity of each of the OEP's functions, many of the roles are designed to be flexible across functions according to priority. It may be helpful for the OEP to make explicit decisions about the allocation of time between its functions, to ensure capacity is preserved for OEP's full scope.

The Board **AGREED** a series of workshops to further OEP's strategic thinking and endorsed the structure proposed. It recommended officers consider the sequence of discussions and the specific questions in the session exploring how and when the OEP is to act most effectively.

The Board considered the proposed approach to include Northern Ireland in the strategy developed from the outset.

This section has been redacted as it relates to legally privileged advice, or its publication would be prejudicial to relations within the UK.

The Board noted the risks. It judged it to be important not to pre-empt any decision of the Assembly, and active engagement in Northern Ireland should be planned with this in mind. Engagement with Daera should mirror the approach to engagement with Defra in respect of the strategy for England. A statutory consultation should follow the Assembly decision. The Board considered that an intensive period of specific engagement in Northern Ireland may be possible after the Assembly decision, to preserve the outline timetable provided. Should the Assembly's decision be delayed beyond 2021, an alternative may need to be developed.

The Board **AGREED** to approach strategy development in Northern Ireland on this basis.

This section has been redacted as it relates to legally privileged advice.

The Board highlighted the importance of effective consultation, and that this requires time and ample opportunity for consultees to contribute.

The Board considered and **AGREED** the elements that should and should not form part of the strategy. It encouraged consideration to be given to the role culture can play.

21.15 **OEP Enforcement Policy: Concepts of seriousness, prioritisation and urgency**

The paper was introduced which introduced the legal framework and concepts of serious failure, serious damage, urgency and prioritisation which underpin the enforcement provisions for the OEP in the Environment Bill. The Board noted that public authorities usually include bodies exercising public functions, which may be regulated by others. The OEP has a duty to respect the integrity of other statutory regimes.

The Board noted that the concepts of serious failure and serious damage are related but distinct in the bill.

This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.

Each is a hurdle to be met for certain of the enforcement functions of the OEP to be available. Officers were encouraged to consider learning from the concept of serious failure as it applies within the environmental damage regulations. **ACTION**

The Board considered the differing approaches to judging seriousness outlined, and the factors proposed which may contribute to a judgement of seriousness.

This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.

The Board **AGREED** that OEP should develop a workable “day one” enforcement policy by the end of 2021 primarily focused on the mandatory content of the policy specified by the Environment Bill.

The Board **AGREED** that the policy should not be unduly fettering and allow the exercise of fairly broad discretion so we can be reactive to our early cases.

The Board **AGREED** that judgements of ‘serious failure’ and ‘serious damage’ should be made via a subjective, multifactorial approach to assessment based around a set of standard factors.

The interrelation of assessments of ‘seriousness’ and ‘prioritisation’ was discussed. It was noted that there must be a distinct judgement in respect of each, but that the assessments should be considered together as components of a whole.

The Board discussed the provisions for urgency within the enforcement arrangements set out in the bill. It noted that stop notices are not proposed to be available, but that the OEP may make urgent application for judicial review, with the potential to seek injunction where necessary. It **AGREED** that where it is determined that there may be ‘serious damage’, the OEP should assess ‘urgency’ by considering the longer timescale and the more limited scope for remedies of environmental review compared to judicial review.

The Board noted the importance of a scheme of delegation within the application of the enforcement policy, and the importance of decisions not to refer matters to the Board in developing this. It was confirmed this is to be developed during the autumn, alongside the processes and principles of the approach. The Board **AGREED** strategically significant

decisions to formally investigate will be referred for the Board to decide in the first year of operation.

The Board considered whether the definition of a failure to comply with environmental law is sufficiently clear to be practical. It was understood that this was intended to be equivalent to the failure required for a judicial review.

The Board suggested that a series of worked examples be used to inform and refine the proposed approach. **ACTION**

21.16 **HR Strategies and Policies**

The Team Leader, HR and Corporate Services introduced the paper which set out the approach which had been taken to the development of the HR approach, and a range of matters within the policies and strategies adopted. The approach had been collaborative with the HR teams in Defra and across the Civil Service, the leadership and staff of the Interim OEP. The Board noted the seven design principles which had informed this policy development.

The approach had assessed Defra policies against good practice across the wider civil service and industry, and against the specific needs of the OEP as a small organisation with particular needs reflected in the design principles. The Board noted that 20 of the 28 policies identified to be required had been developed to reflect Defra policies with little or no variation. Eight policies had been amended in a more substantial way, of which two had been materially redesigned.

The Board considered those policies where variations were proposed from the Defra approach. It was proposed that the performance management policy be under a rating-less approach to enable the OEP to be a learning organisation and remove the stigma associated with 'developing' performance ratings. The Board welcomed this approach and recognised the potential benefits to inclusivity outlined. It considered that the approach could require greater time and commitment from managers than a conventional approach to ensure continuing effective performance conversations.

The pay and reward approach will not provide for year-end bonuses, with a focus on in-year recognition of exceptional work, behaviour or contribution. The Board welcomed this focus, judging it to be important to focus on 'recognition' rather than 'in-year bonus' to explain the approach to colleagues. It may be appropriate to tie recognition to values, such as innovation or impact.

This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.

The Board was informed that the equalities, diversity and inclusion and learning and development strategies developed reflected those of Defra, as an opening strategy for the OEP to adopt. The Board noted this pragmatic approach, but also that the environmental sector is not diverse. In the longer term, OEP may need to develop a distinct approach.

The Board commended the volume and quality of work completed to develop the HR approach. It emphasised the importance of developing propositions to retain staff, alongside those to recruit. It encouraged officers to consider appointment of named individual champions of the environment, health and safety and wellbeing within the OEP staff.

ACTION

The Board noted that the OEP is to be a small organisation, with a great degree of control over its working practice and culture. There are many benefits which could be realised if this is successfully established.

The Board **AGREED** the approach to the development of the HR policies and underpinning principles, and to delegate the approval of individual policies to the Interim CEO.

The Board considered the proposal to enter into a partnership agreement with at least one trade union. Discussions had opened with each of PCS and Prospect. It recognised the importance of trade union recognition within a proposition for employee voice and engagement but was cautious about the benefits of recognition of two unions given the size of the OEP and the burden of managing both relationships.

This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs and/or to commercial interests.

21.17 **Strategic Approach for the 25YEP Monitoring Report**

The paper was introduced, and the five strategic objectives for the report and four strategic issues to be the focus of the report outlined. These had been considered and endorsed by the steering group the Board had established to advise it on the report.

The Board considered each of the strategic issues in turn.

This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs or is material intended for future publication.

The Board **AGREED** the strategic objectives and strategic issues for the 25YEP Monitoring Report.

21.18 **Response to Consultation on amending the Civil Procedures Rules**

The Head of Legal introduced the paper, which proposed a response to Defra's consultation on changes to the civil procedure rules, for the parties to follow under an environmental review. The OEP has a unique interest in these rules, as the party involved in every case.

This section has been redacted as it relates to legally privileged advice.

The Board **AGREED** the consultation response, and that this be submitted. It noted the proposed communications approach, and that an early publication of the response on the OEP website was proposed, to enable others to understand the OEP's perspective on the proposals.

21.19 **Publication of papers and any other business**

The Board **AGREED** that papers be published as indicated on each paper presented.

The Board requested that the meeting schedule of the Board be confirmed as soon as practical, and that this be extended into the next business year at the earliest opportunity.

ACTION