

Minutes

Meeting of the Board

Tuesday 14 December – 9.30am

Online via Microsoft Teams

Members

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

Attendees

Peter Ashford	Head of Legal
REDACTED	Senior Complaints Officer (items 21.49 and 21.51)
Alexis Edward	Head of Finance and Corporate Services
REDACTED	Team Leader, Complaints and Enforcement (item 21.51)
Neil Emmott	Head of Monitoring Environmental Law and Advice
Mike Fox	Head of Communications and Strategic Relations
Andy Gill	Interim Head of Environment and Climate Analysis
Tim Graham	Head of Natural Science Analysis
REDACTED	Team Leader, Scrutiny and Advice (items 21.46 to 21.51)
REDACTED	Principal Officer, Strategy and Governance (items 21.46 and 21.50)
Andy Lester	Head of Business Strategy and Planning (acting as Board Secretariat)
REDACTED	Senior Complaints Officer (item 21.51)
Sandy Rowden	Head of Establishing the OEP

21.41

Apologies for Absence and Declarations of Interest

No apologies were received. There were no additional declarations of interests to add to those recorded on the Register of Interests.

The Board welcomed Mike Fox, Head of Communications and Strategic Relations and Tim Graham, Head of Natural Science to the OEP and congratulated them on their appointment.

The Board recorded its thanks to Sandy Rowden, Head of Establishing the OEP and Maniv Pathak, Head of Insights and Analysis who have or will shortly leave the OEP for their extensive contributions to the work of the Interim OEP to date.

21.42 **Minutes and matters arising**

The Board **AGREED** the minutes of the meeting of 4 November 2021, and the matters arising were noted. The matters arising report is to be amended to provide greater focus on those matters which must be drawn to the Board's attention. **ACTION** Head of Business Strategy and Planning

21.43 **Matters decided by electronic business**

The Board recorded that it had taken a decision by electronic business on 15 November in accordance with its rules of procedure.

The Board had **AGREED** to ratify decisions of the Interim OEP Board set out in the papers circulated as decisions of the OEP Board. It **AGREED** to ratify the execution on behalf of the OEP of a Partnership Agreement between Defra Group Human Resources and OEP for the provision of HR services, dated 17 August 2021.

21.44 **Report of the Interim CEO Designate**

The Interim CEO introduced her paper which outlined progress made, and certain risks under management.

The Board was informed that the OEP's monitoring report of the 25-year environment plan is now to be considered at a later Board meeting. This is reflective of an initially over ambitious delivery plan. A revised publication date is to be confirmed in the new year.

The OEP continues to receive a volume of enquiries in excess of the number of complaints. Some complaints are not of sufficient quality for the OEP to effectively consider. Each of these risks creating capacity challenges for OEP and action is being considered for how to manage the quality of incoming complaints, and improve signposting available on OEP's website.

The Board queried how any conflict of interest of staff joining the OEP would be managed, in particular where they are recruited from an organisation subject to a complaint they may have been party to. Conflict of interest policies and declarations are in place. **ACTION** Head of Business Strategy and Planning to consider the effectiveness of controls in these circumstances.

The Board was informed of delays to policy consultations in Defra. These need to be anticipated and appropriate flexibility retained to manage operationally, particularly when commissioning external expertise.

An update on progress in establishing the OEP was provided. Progress is good, thanks to agility in the team to respond to circumstances as they emerge as infrastructure is delivered. The Board noted that there had been delay in delivery of IT equipment, but that a revised delivery plan is now in place and impacts managed. The staff transfer scheme is progressing to plan. The Board noted a need to update the website imagery to better reflect OEP's remit, and what we do. **ACTION** Head of Communications and Strategic Relations

The Board had previously been informed that Defra had decided that the OEP's budget is not to be subject to a ring-fence by HM Treasury, and instead by a ring-fence within the Defra group. There remains uncertainty on how this ring-fence is to be operationalised. A business planning process to allocate Defra's funding between its business units and arm's-length bodies has begun, before this is resolved. The Interim CEO explained that the OEP is pressing hard for clarity on how the OEP's budget is to be ring-fenced, and for a means to be established for the OEP to participate in business planning in a way which is appropriately governed for its particular role and constitutional arrangements. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

The Board expressed its resolute support for the Chair and Interim CEO continuing to press that ministerial commitments given to Parliament in respect of the safeguards for the OEP's budget, including a ring-fence, are honoured in practice. The Board stressed the need for the OEP to not be constrained by any headcount restriction which fettered its ability to operate as intended. It urged officers to continue to strenuously pursue resolution. The Board offered its full support to the Interim CEO and Chair in escalation, if needed.

The launch event planned for 24 January is to be replanned as a virtual event. The Board judged it important that the event is a purposeful engagement, and encouraged Officers to consider it an opportunity for expanding OEP's reach. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

21.45 Framework Document

The Head of Legal introduced the paper, and outlined the progress made in developing and agreeing a framework document. The Interim CEO declared her interest in the provisions of the document relating to arrangements between the Board and accounting officer.

The Board **AGREED** that the OEP should seek to agree a tripartite framework document with Defra and DAERA in anticipation of receiving a Northern Ireland remit in early 2022.

The Board considered the outstanding issues for agreement. The Board expressed its firm view that the framework document must be right, and properly reflect the OEP's role and constitution. It would not agree to any document that did not do so. Officers should aim to secure the framework document is agreed, but not compromise on its substance.

This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs. It **AGREED** that the OEP should be flexible in agreeing outstanding points with Defra (and DAERA) where this does not impinge on its fundamental interests, but that the OEP should hold firmly to the principles that the final document must:

- (a) reflect provisions of the Environment Act that limit what can lawfully be included;
- (b) protect the OEP's independence, with provisions that give meaning to the Secretary of State's and DAERA's duties regarding independence; and
- (c) document a process for OEP budget-setting that safeguards OEP funding, consistent with the numerous commitments ministers have made to Parliament in this respect.

The Board discussed the draft strategic objectives presented. It endorsed the themes and intent of the objectives. The Board offered suggestions for improvement, including that there should be more accessible language and an improved rhythm to the four objectives, so that they work coherently together. More outcome-focussed language could be considered for objective one, and better expression should be found for objective four. Across the objectives, reference should be made to human health and wellbeing alongside the natural environment.

The Board **AGREED** the draft strategic objectives which create the structure for the draft strategy in principle and will return to redrafted text at its next review.

The Board considered and gave feedback on the draft strategy presented, and noted the feedback received through stakeholder engagement. It recommended that the structure of the strategy be considered, to avoid the repetition in the sections on objectives and functions. The complaints section should be more prominent, recognising that there are elements of complaints process on which we would not wish to consult. Officers should consider whether the strategy is the right channel to encourage improved quality of complaints.

The Board judged that a clearer and early expression of OEP's remit should be included, for example in explaining what reserved matters are, and what OEP's role is overseas. It queried the absence of reference to the EU, its institutions and the institutions of the Republic of Ireland. It discussed the need to set expectations appropriately, not suggest that OEP will have minimal effect, nor that we will solve all issues. There was some inconsistency through the draft on this tone.

A discussion was held on the section on proportionality. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.* This section is to be revisited.

A discussion was held on the tone and writing style. Views included that the draft should have more active language, and be clearer about the approach and actions we will take. The shortness of sentences was welcomed, but to take care that it didn't become more pronounced. It was noted that 'we' is used to mean both the OEP, and the general public; this should be avoided. The Board encouraged Officers to consider an easily navigable web based version, though recognised this may be developed for the strategy adopted in April. The Board felt a clear key or contents page would aid readability, as would a section on 'the OEP at a glance'. This would show stakeholders what the OEP would and would not do.

The Board judged the overall tone too modest, and there was reason to be more purposeful and determined. This must not sensationalise the OEP's role, but be bolder, and reflect a firmness of intent. This must be balanced with not over promising, given the resources available.

The Board considered the consultation approach outlined. It noted the successful approach to pre-consultation engagement, and that the content discussed with stakeholders had been broadly welcomed. It is not expected that the consultation would generate strong resistance to our proposed approach, but instead provide insight and welcome challenge.

The Board had a discussion on the appropriate way to engage with the general public, and the issues on which that engagement should occur. A range of views were expressed. There was scepticism that citizen juries were an appropriate vehicle for this engagement, but a recognition of the need for genuine public engagement. This would protect against a disconnect with public priorities. A strategy for public engagement is needed, in time. **ACTION** Head of Communications and Strategic Relations.

The Board recommended greater degree of engagement with select committees, and their chairs. **ACTION** Head of Business Strategy and Planning

Subject to its comments, the Board **AGREED** the approach to consultation set out.

21.47 **Our approach to scrutiny of environmental law**

The Board discussed the proposed interpretation of our monitoring of environmental law function. The Board noted that a broad interpretation of the duty was advocated, which would include, for example, regulatory regimes which fall from law and the regulations they introduce as well as guidance and command papers if closely connected to environmental law. *This section has been redacted as it contains legally privileged advice.*

The Board discussed where the OEP may focus to maximum effect. The proposed interpretation of our duty allows for monitoring of environmental law as it is applied on the ground. This ought not be an exclusive focus in our approach, but we may wish to note this as an opportunity for the OEP to add value, without overreaching our role, and reaching through other regulators and public authorities. Similarly, there may be particular opportunities in monitoring systemic issues, or in the OEP seeking to bring coherency and cohesion by not taking a narrow view of the law to be monitored. We do not need to choose one over another in our strategy, but should leave our options open.

The Board considered the approach proposed for how we will monitor. *This section has been redacted as it contains legally privileged advice.* The Board *this section has been redacted as it contains legally privileged advice* and discussed that our stakeholder engagement, monitoring of the EIP and broader functions collectively monitor environmental law. The Board queried whether a state of environmental law review might be commissioned.

The Board discussed the nature of our reports under this function. These might aim to be somewhere between a select committee and law commission report.

It noted that delivery plans need to be realistic to include procurement, consultation, and engagement after the fact. It may on occasion be appropriate to encourage select committees to take an interest in an area of law we have monitored, with a sound and authentic evidence base on which to build.

The Board **AGREED** the approach for monitoring the implementation of environmental law set out.

The Board **DID NOT AGREE** the recommendation that our early analyses will be more exploratory, as we develop this function. Instead, it argued that all our work should lead to reports of substance, which have impact.

21.48

Our approach to scrutiny of EIPs and targets – initial activities

The paper was introduced setting out the first steps that might be taken in developing the function of monitoring and reporting on EIPs and targets. In considering these first steps, the Board noted that the reaction to the first report will be important in determining the right approach, as will lessons learned through its creation.

The Board judged that our first priority should be to critically assess the government's progress report, and how credible it is. This is to be core for our work and will include extending our insights through the six building blocks which are the foundation of our first report. It will not normally be the OEP's role to separately assess progress, though we should focus on gaps we identify so that the progress report can be improved.

The Board noted the importance of stakeholder intelligence in our critical analysis, and identification of gaps. This should include determining gaps or issues that might be a priority.

The Board noted that the current report is a stock-take. Having done this, we may wish to test the extent to which progress is made in the areas identified. It will be important to consider the cycle for review of the EIP, so that our activity can be planned such that our recommendations have most impact. Over the five year review cycle, one approach would be to have a different focus each year to provide a basket of evidence over the cycle.

The Board discussed that the monitoring and reporting of targets is important, including who is accountable for delivery. Our competence and capacity to monitor the priority areas is therefore important. It may be important to seek that government integrate the targets properly into the EIP.

The Board reflected on the competencies needed for this function to succeed. Our expertise might be in methodology and governance, rather than specific subject matter areas. An operating model could be developed that saw that commissioned within a common, repeatable model. Our internal operating model and resource strategy is important, and particularly how we access and procure external expertise.

The Board **AGREED** that the baseline monitoring activities in the first 6 months of next year focus on developing our governance structure for monitoring, preparing for our second 25 YEP monitoring report and building our capability to monitor the legal targets due to be set by autumn 2022.

The Board **AGREED** to develop a governance proposition to steer decision making on the 2022/23 report. An operating model for delivery of the EIP and targets is to be a key part of that, including for example, how we access expertise.

The Board **AGREED** that the development of an analytical decision support tool to support the OEPs monitoring activities is **NOT** a priority but will be regularly reviewed depending on the extent to which government develops a sufficiently valid tool.

21.49

Our complaints procedure

The complaints procedure was introduced. It aims to guide users in easy and user-friendly language reconciled with the statutory obligations.

The Board discussed the merit in having a clear expression of what a good complaint looks like, so that complainants can be helped to get complaints right. This could be within the

procedure or associated frequently asked questions. **ACTION** Head of Monitoring Environmental Law and Advice

The Board made observations on the complaints procedure, including of its tone and language. It recommended reviewing the website of the New Zealand commissioner for the environment as a comparison.

The Board noted that it can be helpful to allow complainants to talk to a member of staff to ensure they complete complaints well, and that this can save resource over time. It noted that visual references, such as a decision tree, can help user understanding.

Subject to its comments, the Board **AGREED** that we should finalise and publish the statutory complaints procedure on the substantive basis considered, and **AGREED** that final approval of the complaints procedure is a matter for the Interim CEO in consultation with the Chair.

21.50 **Our prioritisation approach**

The Board considered the prioritisation approach presented, which was informed by the Board's previous discussions, and the views of stakeholders.

The Board judged that greater clarity is needed to ensure we capture small scale cumulative effects, whether from the same cause or a similar cause on the same issue. The current drafting appears to emphasise a single effect.

The Board noted that the framework should allow for particularly significant cases or matters to be progressed, where a systemic impact on the legal framework or policy might be expected. This would be considered in judgements about the difference our actions could have.

The Board judged that the framework should be clearer that there are issues on which we have no discretion.

It considered the approach to operationalisation of the framework, and noted that there is an appropriate emphasis on judgement which it welcomed. It expressed caution about the level of specificity to be included in the public consultation ahead of the approach being tested, and suggested Officers trial an approach, or considered whether more flexibility could be secured by expressing differently.

Subject to this discussion, the Board **AGREED** the prioritisation framework presented.

21.51 **Working with others**

The paper outlined progress of developing memoranda of understanding (MoUs) with the ombudsman services, devolved authorities and the Climate Change Committee and the intentions with respect to other organisations.

The Board considered the draft MoU with PHSO. It asked that Officers reflect on whether issues relating to GDPR, confidentiality and a shared intent to cooperate were appropriately included. It noted that the principles for cooperation appear to be negative, rather than positive, and could be drafted differently to include, for example, sharing of experience and information.

Subject to this, the Board **AGREED** in principle the draft MoU presented as the substantive basis for agreement of an MoU with the PHSO. The Board **AGREED** to delegate final approval of the MoU to the Interim CEO.

The Board was informed of discussions on working agreements held with the equivalent bodies in the devolved administrations. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

The Board considered whether an MoU with Natural England and the Environment Agency is valuable. It judged that it was important to agree the ways of working with these bodies, which may, or may not, be appropriate to document within an MoU. It recognised that the basis of engagement must be clearly set out and mutually understood but was cautious about the OEP entering into multiple MoUs. The Board highlighted the importance of MoUs being kept up to date, and subject to regular review. That review could, for example, be via a standing ways of working agenda item in appropriate meetings.

Officers are to consider which organisations might warrant the OEP entering into an MoU, and those where other ways of documenting the ways of working might be preferable.

ACTION Team leader – Complaints and Enforcement

21.52 **Finance report**

The Board noted the finance report which included financial information since the OEP was legally created. There was a risk of underspend in the current financial year. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

The Board queried the extent to which there were short-term projects that could be brought forward to make good use of any underspend identified. It was noted there are capacity challenges in delivery of projects this year, but an approach to identify a medium-term schedule of work to be deployed flexibly across financial years was intended.

21.52 **Any other business and publication of papers**

The Board **AGREED** publication of papers as identified in each paper.

The Board requested information on the diversity of the appointees to the organisation so far. **ACTION** Head of Finance and Corporate Services.

The meeting ended at 16.01