

## Board Paper

### Date

27 April 2022

### Title

Delegation Policy: Complaints, Investigations & Enforcement (CI&E) Procedures and Chief Executive (CEO) Delegations

### Report Authors

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Paper for decision by [Electronic Business](#)

## Issue

1. On 2 February 2022 the Board approved interim arrangements for delegated decision-making within the OEP and have now agreed the Financial Scheme of Delegation which was submitted for approval on 17 March 2022.
2. Building on this, and in anticipation of final approval of the OEP Strategy and Enforcement Policy in June 2022, the Complaints and Investigations team propose the adoption of an updated non-financial scheme of delegation (NFSoD), specifically Part 5 – Enforcement to ensure that the team can carry out its duties efficiently and effectively.
3. To increase resilience, we also propose standing arrangements for the delegation of decisions reserved to the CEO or Interim CEO, in the event of their absence.

## Recommendation

4. The Board is recommended to agree the scheme of delegations as set out at Annex A (updated Parts 5 and 10 of the NFSoD).
5. The Board is recommended to note the supporting Complaints, Assessment and Investigations Procedures, and the status of the underlying policies and procedures.

# Background

## Delegation Policy

6. The Board has previously agreed limited delegations of its powers to OEP staff and others, whilst delegating other powers to the Interim CEO. Our ambition is to secure the Board's agreement to delegate to staff more of its powers to maximise the efficiency, effectiveness and resilience of the OEP's operations.

## Complaints, Assessment and Investigations and Procedures

7. Local procedures have been developed to guide members of the CI&E team as they undertake their varied roles and responsibilities, and to ensure appropriate governance and controls are in place.

## Additional Policies and Procedures

8. Additional policies and procedures are being developed to support the CI&E team's activities.

# Analysis

## Delegation Approach

9. On 2 February 2022 the Board adopted its delegation policy, as required by the Environment Act. All delegations must be made to the extent, and on the terms, that the Board determines in accordance with that policy. The Board also delegated limited functions to staff and via financial and non-financial schemes of delegation, with most other delegable functions being confirmed as delegated to the Interim CEO. The number of delegations approved by the Board was expanded to include the financial scheme of delegation on 17 March 2022.
10. We now propose to seek the Board's agreement to further delegations to staff now that the OEP's relevant policies, procedures and governance for a number of operational decisions have been developed and put in place.
11. Following the closure of the strategy consultation and final adoption of the OEP Strategy and Enforcement Policy anticipated in June 2022, the CI&E team will become fully operational and will need to progress complaints and investigations efficiently. This can be delivered more effectively if further delegations of specific decisions in relation to our investigation and enforcement functions are made.
12. In relation to decisions delegated solely to the CEO, both business continuity and legal risks have been identified, given the CEO will inevitably be absent on occasions, for example to take annual or sick leave.
13. The proposed delegations are supported by relevant policies, procedures, governance and training to ensure that the delegated decisions can be made and recorded safely in accordance with relevant requirements (e.g. the Environment Act, Enforcement policy, local Complaints and Investigations policies etc.).
14. We are therefore recommending that the Board agrees an updated Part 5 Enforcement and Part 10 Staff NFSoD (Annex A). The updated NFSoD has been embedded within the policies and procedures discussed below.

## The Complaints, Assessment and Investigations Procedures

15. The existing **Complaints and Assessment Procedure** which has been used by the Complaints team since the inception of the IEGS has been updated to incorporate all relevant delegated responsibilities highlighted in the NFSoD. The procedure reflects elements of the Target Operating Model previously agreed by the Board. Local governance and authorisation mechanisms that were previously enacted on an informal basis have now been formalised and embedded within this procedure.
16. The **Assessment Process** as described in the above procedure has been developed to support CI&E officers in their decision-making process following the validation of relevant complaints. This procedure requires the formation of multi-disciplinary teams (MDT), and will guide officers through the information gathering stage, and the seriousness and prioritisation assessment. The resulting recommendations will then be escalated to the appropriate person for a decision in accordance with the NFSoD; moving forward, a panel structure may be employed to review case recommendations. The Procedure should be used in conjunction with the Assessment Template (see Annex B) to ensure case information, decisions, rationale and justification is recorded in a standardised and accessible format.
17. The **Investigations Procedure** has been developed by the Principal Investigations Manager and Senior Investigations Officer, in consultation with officers in the Investigations team and the Legal team. The purpose of this procedure is to guide the investigations team once a formal investigation has been recommended by the assessment decision-maker(s) and authorised by the CEO. The Procedure should be used in conjunction with the Enforcement Template (see Annex B).
18. The procedures that encompass the work of the CI&E team have been developed through a whole-team approach drawing on a vast amount of experience from different regulatory and investigative backgrounds. Each procedure has been trialled and refined using real cases to identify any areas for improvement. Working groups have ensured that the Chief Regulatory Officer, Head of CI&E and members of the legal team have been able to monitor and influence the progress of these procedures and have assurances that there is appropriate governance and support in place. The final drafts of these documents have now been made available to the CEO for review and approval.
19. The delegations will be reviewed on a regular basis and in light of operational experience.

## Additional Policies and Procedures

20. The underlying policies and procedures that support the CI&E team in all their functions are in various states of readiness. The table below shows the processes and the status of the policies.

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

## CEO Delegations

21. To increase resilience, it is proposed that during planned absences the CEO should be able to sub-delegate their powers to a named Executive Director, and that during unplanned absences, of a type (e.g. death, serious injury or insurmountable barriers to communication) that makes it impossible for the CEO to make such a sub-delegation, the Chair should be able to make such a sub-delegation.

22. It is proposed that such sub-delegations must be made in writing and is permissible only in the event of the Chief Executive or Interim Chief Executive's planned or unforeseen absence. The particular delegations being sub-delegated should be specified. A standard template will be developed and used to capture this and will be managed by the Private Office team.

## Finance and Resource

23. These delegations will facilitate the efficient operation of the OEP and mitigate the risk of bottlenecks preventing the efficient use of resources.

## Impact Assessments

### Risk Assessment

24. If the Board retains too much of its powers, it risks becoming overwhelmed and a bottle neck to the OEP's efficient and effective operation. This is not deemed an immediate risk, but its likelihood will increase as the OEP opens fully for business and starts to exercise more of its powers more frequently. Hence these proposals to extend delegations appropriately and in advance of need.
25. If the Board delegates powers without adequate controls (e.g. policies, procedures and governance) then these risk being used in ways contrary to the Board's duties and expectations, creating legal, reputation and other risks. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*
26. Functions delegated solely to the CEO pose a business continuity risk, given their inevitable absence on occasions, for example on annual or sick leave.

### Equality Analysis

27. It is not considered likely that differential equality impacts will emerge through this activity. We will consider an equality impact analysis on our proposed activities, as these emerge.

### Environmental Analysis

28. Our proposed approach to delegations is intended to further secure that the OEP runs as an efficient and effective organisation. This will support the OEP in complying with its various environmental law duties and maximising its contribution towards protecting and improving the environment.

## Implementation Timescale

29. Following board approval of the relevant parts of the NFSoD (Part 5 – Enforcement and Part 10 – Staff), the CI&E team will adopt the procedures that encompass our remit, detailed above.
30. CI&E officers will be contacted and provided with a copy of the adopted NFSoD along with the procedures that cover their roles and responsibilities. Any necessary training will be provided.

31. The delegations to the Chief Executive or Interim Chief Executive and Chair to sub-delegate the Chief Executive's or Interim Chief Executive's functions will be implemented immediately. A standard template will be developed and used to capture this.

## Communications

32. The updated NFSoD will be published internally.

## External Stakeholders

33. These are largely internal matters but may be of interest to those carrying out the OEP's first tailored review in the autumn, hence the desirability of completing the delegation policy by then.

Paper to be published	YES
Publication date (if relevant)	With meeting minutes

# ANNEXES LIST

## **ANNEX A**

*This section has been redacted as it contains information for future publication.*

## **ANNEX B**

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