



Office for Environmental Protection

Minutes

Meeting of the Board

Thursday 2 March 2023 10am

Worcester Country Park, Wildwood Drive, Worcester WR5 2LG

Members

Malcolm Beatty OBE	Board Member
Julie Hill MBE	Board Member
Richard Greenhous	Chief of Staff
Professor Dan Laffoley	Board Member
Dr Paul Leinster CBE	Board Member
Professor Richard Macrory CBE	Board Member
Natalie Prosser	Chief Executive
Dame Glenys Stacey	Chair

OEP Attendees

Peter Ashford	General Counsel
REDACTED	Senior Investigations Officer (item 23.22)
REDACTED	Complaints Officer (item 23.28)
Alexis Edward	Head of Finance and Corporate Services
Mike Fox	Head of Communications and Strategic Relations
Helena Gauterin	Head of Environmental Law (item 23.23)
REDACTED	Principal Scrutinising Environmental Law and Advice Manager (item 23.23)
REDACTED	Principal Lawyer (item 23.22)
Andy Lester	Head of Business Strategy and Planning
Professor Robbie McDonald	Chief Insights Officer
REDACTED	Senior Investigations Officer (item 23.22)
Ellie Strike	Head of Complaints, Investigation and Enforcement (item 23.21 and 23.26)
Kate Tandy	Head of Litigation and Casework (item 23.21, 23.22 and 23.24)

Helen Venn Chief Regulatory Officer
REDACTED Business and Governance Officer (Secretariat)

Other Attendees

REDACTED Director, Independent Audit Limited

23.16 Apologies for absence and declarations of interest

The Board received apologies from the Head of Finance and Corporate Services. *This section has been redacted as it includes personal data* director at Independent Audit Limited, is observing the meeting (up until item 23.23) as part of the Board effectiveness review.

There were no new declarations of interest.

23.17 Minutes and matters arising

The Board agreed the minutes of the meetings of 5 and 18 January 2023. It noted the matters arising.

The Board queried the progress of the work drawing comparison between the Environment Act targets and existing/planned European Union targets. This is due to be considered by the Board in May. ACTION: Chief Insights Officer

23.18 Items decided by electronic business

The Board took the following decisions by electronic business on 30 January 2023:

The Board AGREED to appoint the Chief of Staff as the next executive member of the Board.

It also AGREED that if a relevant Executive Director post is either i) temporarily vacant or ii) the role holder is ineligible to be appointed as a member of the Board, the next executive member in sequence shall be appointed to the Board in their stead.

23.19 Report from the Chair of ARAC

The Chair of the Audit and Risk Assurance Committee provided an update on the business of the Committee.

The National Audit Office's audit approach for 2022/23 had been presented. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.* The audit will not be completed until later in the year, and therefore we anticipate laying our annual report and accounts in September. The Board noted that the timing is in the NAO's hands.

The NAO Engagement Director is also responsible for the audit of the Environment Agency. This potential/perceived conflict of interest is being kept under review, and the Chair of the Committee and Accounting Officer are satisfied that it is being managed.

23.20 Report of the Chief Executive

The Board noted the progress in delivery of our strategic objectives.

We laid our Environmental Improvement Plan (EIP) monitoring report for England in Parliament on 19 January 2023. This was followed by a press conference as well as online and in-person events. The report was welcomed by almost all stakeholders.

The timing of publication was less than ideal, so close to the longstop date for EIP refresh. We aim to publish next year's report at an earlier date, and then to bring that date forward again for the subsequent report. In this way, our reports can be potentially more helpful to government, given the timing of its own annual review. Analysis is being undertaken on the refreshed EIP. This will be provided to the Board at its April meeting. ACTION Chief Insights Officer.

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

The Board considered and AGREED the additional delegations related to the OEP's public facing services and enforcement function, detailed in Annex A to the paper. The delegation policy (attached at Annex B) should be updated accordingly. ACTION Head of Business Strategy and Planning.

The Board noted the draft response to DAERA's consultation on the draft Ammonia Strategy for Northern Ireland. Our response outlines that while we very much welcome the prospect of an ammonia strategy, the proposed pathways for delivery are complex and it is unclear if they are achievable. The Board agreed that our response should recognise and welcome progress, but highlight the need for a fully funded implementation plan. It is here in the detailed critique that the OEP can be of most value, in stimulating the development of potentially effective and timely implementation arrangements.

The Board also urged that we frame our response in the wider political context, and *this section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement. This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

The Board discussed funding for 2023-2024 and beyond. No decisions have been made as yet by Defra. We anticipate that we will have more information by mid-March.

This section has been redacted as its publication would be prejudicial to relations within the United Kingdom.

The Board strongly emphasised that the OEP cannot and will not apply funding provided by Defra to subsidise Northern Ireland functions. If the funding from DAERA is insufficient for the work we plan to do, then our Northern Ireland work must reduce and Northern Ireland based staff contribute more (as a consequence) to our functions in England.

The Board noted that the Northern Ireland EIP may not be published until later in the 2023/24 financial year. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs and as it contains information provided in confidence.* ACTION Chief Executive to meet with the Permanent Secretary of DAERA.

Work is progressing on the lease for our Wildwood Office premises, and we are hopeful that we will sign the lease this financial year. The risk of not signing the lease this financial year has been escalated because it materially affects our capital spending this year, and financial requirements next year. The Board queried the organisational changes that the Executive expect with the move to more office working. Work has started to define the benefits of using the office space (particularly where staff are used to homeworking) and develop a plan for realising them.

The Board welcomed the progress of the people strategy. ACTION Chief of Staff to consider whether any changes are needed to arrangements for Board oversight of HR issues.

23.21 Environmental Law Report on Post-Implementation Review

The Board considered the draft report. It was advised that it has been reviewed by the National Audit Office and the Regulatory Policy Committee. We have received confirmation of the information in the report from the Department for Transport, the Department for Levelling Up, Housing and Communities and the (previous) Department for Business, Energy and Industrial Strategy. Defra is yet to respond, and we do not know the date for a response. The report is based on publicly available information, so Defra's confirmation is not essential.

The Board discussed the draft report. It suggested re-ordering the foreword so that the benefits of post-implementation review are stated clearly upfront, before discussing why the law is there, and highlighting that undertaking post-implementation review is a legal requirement.

The Board discussed the proposed first recommendation *this section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

Subject to this and to final fact-checking on technical annexes, the Board AGREED that the Environmental Law Report on 'Post-Implementation Review in Environmental Law' be laid in Parliament and published.

The Board AGREED to delegate approval of any non-material amendments in light of fact checking to the Chief Executive in consultation with the Chair.

23.22 Investigation proposal – *This section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement.*

The scope of the potential investigation was outlined. *This section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement, its publication would be prejudicial to the effective conduct of public affairs and it contains legally privileged advice.*

The equalities impact assessment suggests that equalities considerations should not have material impact on the Board's decisions relating to this investigation.

The Board is keen to understand the relationships between planning and permitting regulations, and by extension the role of the Northern Ireland Environment Agency (NIEA). *This section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement and its publication would be prejudicial to the effective conduct of public affairs.* The messaging will be kept under review as the investigation progresses.

The Board queried if there is a known acceptable level of ammonia deposition upon protected habitats and suggested that links to the draft Northern Ireland ammonia strategy should be considered.

The Board considered the assessment criteria set out in the Enforcement Policy. It AGREED that the OEP should commence an investigation into suspected failures to comply with environmental law by DAERA, subject to confirmation of sufficient resources for our Northern Ireland functions, and the prioritisation of those.

The Board AGREED the proposed objectives of such an investigation: *This section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement and its publication would be prejudicial to the effective conduct of public affairs.* These are subject to conversations with DAERA about the wider context of the investigation.

The Board AGREED the proposed scope of such an investigation: to examine the extent to which DAERA has complied with environmental law in relation to the development and use of its Operational Protocol for the assessment of cumulative impacts from atmospheric nitrogen pollution, as opposed to broader rules surrounding nutrient neutrality.

The Board noted that the proposed investigation covers Northern Ireland. *This section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement and its publication would be prejudicial to the effective conduct of public affairs.*

23.23 Nature – Environmental Assessments project paper

The Board reflected upon the current direction of the project, as set out in the paper, and offered guidance on which key messages to develop further and on the proposed report structure.

The Board was advised that we have had a positive response to the call for evidence, and engagement with the Institute of Environmental Management and Assessment (IEMA) plus external consultants. We have also recently met with the Department for Levelling Up, Housing and Communities (DLUHC).

The Board urged the executive to take a strategic view and to look at the wider national context and the wider policy context and to assess (for England) the relationship with the new EIP. There are a good number of relevant but diverse policies. It would be useful to know how the analysis and recommendations of the reports link with latest policy initiatives such as, in England, biodiversity net gain, local nature recovery strategies and the environmental land management schemes. The Board judged that international comparisons would be useful part of the evidence base.

The Board noted the provisional timescale to publish the two reports (England and NI) *this section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.* It noted that as the report progresses, we might have clarity on other elements such as the effect of the REUL Bill. The timetable may need to vary, if we choose to prioritise responding to DLUHC's consultation on the new environmental outcomes' regime. We expect this may provide an important vehicle, in England, to emphasise our key messages and have influence but are yet to see the consultation. The Board urged the team to consider the deliverability of reports by June, and queried whether aiming to lay reports after Parliament's summer recess might be more realistic and allow more scope for impact, particularly with Parliamentarians.

The Board endorsed the proposed report structure. It urged care in the positioning of the reports, having regard to the influence we aim to have on government.

23.24 Water – Belisama project paper

The Board received an update on the water project. Currently the focus is on Water Framework Directive (WFD) Regulations and their delivery through River Basin Management Plans (RBMPs).

The Board provided a steer on the scope of the project. It noted the broad scope and therefore the potential for further focus once the initial element was complete. Our work on bathing waters is one example – this is progressing slightly behind the rest of the project and will be scoped separately.

The Board raised the prospect of considering economic analysis, so that we can be clearer about the cost of implementation of any recommendations in our reports. It was agreed that a fuller Board discussion would be helpful.

The Board commented on the emerging issues as set out in paragraph 11 of the paper. It specifically considered the established hurdle approach to ‘good status’. While this is a rational approach, it is also important to keep the individual parameters in mind and to analyse smaller gains, for example the reduction in phosphate levels.

The Board advocated for the need for a clear context for the public and urged caution when using the word ‘protection’.

23.26 REUL Bill and programme

The Board endorsed the strategy and objectives set out in the REUL Project Initiation Document (PID).

The Board was updated on latest discussions with Defra on how we will engage with the processes of implementation using the powers proposed by the Bill. *This section has been redacted as it contains information provided in confidence.* In this context, the Board queried the ability to revoke environmental law under powers proposed by the Bill. It will be imperative to make our own assessment of the impact of laws which are planned to be revoked.

Our primary interest at this stage is not to second guess the decisions the Bill allows Defra to make. Instead, we aim to ensure we can be ready for the clear role we have to monitor, and advise on the decisions to amend, or revoke that the Bill would allow. The Board suggested we could encourage Defra to set out how it could best help us to gain the assurance that we need. The relationship with Defra will be key, and the Chair could meet with senior Defra officials to discuss further. ACTION Head of Business Strategy and Planning.

The Board noted that some NGOs would wish us to criticise the Bill on constitutional grounds. This is not our role. Our role is instead to focus on better environmental laws, better implemented as the provisions of the laws are enacted by government departments.

23.27 Finance report

The Board considered the Q3 financial results, and the updated forecast for the remainder of the financial year. It noted that the Q3 report has been reviewed by the Executive, but not (as yet) the Audit and Risk Assurance Committee.

The Board noted the transfer of pay budget to General Counsel from Chief Insights Officer cost centres *this section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

The Board queried the accuracy of forecasting. We will know more at year end, but believe we are in a good position and are confident our practices have improved in year. We are close to having prompt month by month actuals, albeit this relies on the finance team having sufficient capacity.

23.28 Complaints and enforcement decision summary

The latest complaints and enforcement decisions were summarised. The Board noted the decisions made to date and provided observations and reflections on the report. It suggested links on the website to all local authorities' websites to help with signposting in instances where we do not take a complaint forward. There is work underway on the website, and this will be taken into consideration.

The Board asked for a breakdown on the 19 complaints that were not taken forward; how many were deemed not serious and how many were considered serious but did not meet the prioritisation test. It was advised that 15 complaints were closed as they showed no indication of a failure to comply with environmental law. One did show a failure to comply but was not deemed serious. The remaining three were not taken forward as they were not judged a priority in their own right - as we are taking action on the relevant strategic issue.

Any other business

The Board discussed the UK Government's announcement that only three of five proposed sites will be designated as Highly Protected Marine Areas (HPMAs). It was concerned that this may be indicative of a failure to take the necessary action to deliver the commitments of the environmental improvement plan and Environment Act targets.

The Board was reminded that these are pilot sites intended to deepen understanding on how such designations work – of themselves, their impact on the Government's ability to meet the targets was always limited.

The Board welcomed suggestions that this could provide a case study of the gap between current delivery and the trajectory needed for environmental targets to be achieved. That could be in our next EIP monitoring report for England, or speeches and other public statements in the interim.

The meeting ended at 15:25