

Board Paper

Date

18 October 2023

Title

Report of the Chief Executive

Report by

Natalie Prosser, Chief Executive

Paper for information and decision

Open in part

Summary

1. We continue to progress our work programme and are broadly on track to deliver what we intended this year – we report the exceptions in this report.

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

2. Taken together, these and our other work programmes are a portfolio of complex and politically charged issues which will form a significant proportion of the Board's business in the coming months.

Recommendation

3. The Board is recommended to note the progress in delivery of our strategic objectives.

Strategic Objective 1 - Sustained environmental improvement

Monitoring environmental improvement in England

4. This year's analysis of the EIP is nearing completion and the report is at an advanced stage of drafting. An update and paper for Board is on the agenda.

Monitoring environmental improvement in Northern Ireland

5. In lieu of an EIP assessment report, and following approval by the Board on 5 September, work has started on a report on the drivers and pressures affecting biodiversity in Northern Ireland. A call for evidence was released to stakeholders, with submissions expected by 3 November. In-house analysis of the pressures on priority species and habitats has progressed. Lough Neagh will be a major case study within the report, building on the issues identified as per the

briefing note on Lough Neagh appended as annex A. The majority of the work on this project remains in-year, though completion has moved slightly to early May 2024.

6. Options for how the OEP should respond to the crisis highlighted by events in Lough Neagh are being developed. Our response will encompass the full range of our functions to ensure our intervention has a positive impact on current management and future condition of the lake. While Lough Neagh is the most visible example of the generally poor state of aquatic ecosystems in Northern Ireland, the challenges affecting the lake are near-ubiquitous, and relate primarily to nutrient inputs. As such, in developing our response, we are looking at options that will have a wider impact beyond the Lough Neagh catchment. There are unlikely to be any quick wins in relation to this issue. However, we consider the issues of nutrient pollution to be of such significance as to make it a likely strategic priority for the OEP in Northern Ireland.

Research and evidence development

7. Five research projects are in progress: UKCEH are assessing species abundance indicators and targets, ICF are analysing the improving nature goal, IPSOS are working on futures approaches, Resource Futures are analysing waste management in Northern Ireland and we recently appointed ADAS to deliver our soils project. We have committed £518K of the original £637K forecast spend on research, with further projects valued at c.£105k in the pipeline to support work within the business plan to September. Further project extensions and new projects totalling £180K are being put in place now in response to renewed business plan figures. These will commence in Q4 and are predominantly to support our EIP assessment for next year.
8. IPSOS' work on scoping environmental forecasting is progressing well. The secondment of an expert from Natural England has now ended and they have developed resources to upskill OEP staff on futures methodologies, which are being disseminated via internal workshops.
9. We have received the final report for our baseline assessment of waste management and illegal disposal in Northern Ireland. This is being reviewed by the NI Audit Office as it is currently undertaking a related piece of work on waste, and we are keen to ensure our work is consistent. We aim to publish this in November.
10. We are developing a project to support us in building an independent view on the trajectory to achieving Good Environmental Status (GES) for the marine environment. This project will support us to gather and analyse the views of the stakeholder community on the drivers, pressures and impacts in the marine environment. It will also seek views on the current state of the evidence base.
11. We have appointed ADAS to undertake a project on soil health and "sustainable management" of soils, as required under Goal 6 of the EIP. The objective is to provide a critical appraisal of the current regulatory and governance framework and non-governmental schemes supporting the sustainable management of agricultural soils in England. The work will be used to support our ongoing monitoring and assessment of government's progress with the England EIP. We may also use these outcomes to inform our response to legislation changes, policy changes, consultations and requests for advice that relate to soil, for example the upcoming land use framework for England and DEFRA's own stock take of the regulatory framework supporting

the sustainable management of soil. In addition to providing a foundation for our own work on soils, it is our intention to make the eventual report more widely available, particularly to others working in this active area of development.

12. We have conducted a basic internal analysis of the contribution of ELMs to the improving nature goals of the EIP. This will feature in our EIP assessment report this year. New, externally commissioned work on ELMs will develop this and provide a more detailed evaluation of the policy and delivery landscape for nature-friendly farming, to which ELMs are a major contributor, and will generate a systems map showing the policies, environmental systems and people involved. This will be run as a scope extension to our existing contract with ICF, instead of a stand-alone project as previously set out in the business plan. This latter work will form part of our EIP assessment next year.

Strategic Objective 2 - Better environmental law, better implemented

Environmental assessments

13. By the time the Board meets we will have laid our report in Parliament and met with Defra and DLUHC officials to discuss its findings and our recommendations. A verbal update of the report's reception and interest will be given.

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Protected sites

14. We have completed the first phase of evidence-gathering and analysis. From this we identify six major themes for further consideration. These are: Legislative gaps/weaknesses; Governance; Resourcing; Evidence, monitoring and evaluation; Working with landowners; and keeping the network under review. We are moving into a further analysis phase, with a view to deepening our insight within these themes. We plan to publish our reports for England and Northern Ireland before the UK Parliament goes into recess in the summer of 2024. This is a delay from the previous expectation, due to a combination of external contractor and stakeholder delays, and internal delays caused by the time needed to analyse evidence.

Fisheries Management Plans

15. We provided an overarching response to the consultations on the six frontrunner Fisheries Management Plans (FMPs), as these are the key mechanism for ensuring sustainable fisheries and their contribution to the achievement of Good Environmental Status of the marine environment. They will also set the template and direction for the remaining 36 plans.
16. To develop the response, Insights trialled a new approach to rapid evidence gathering by commissioning MarFishEco to undertake an analysis of the FMPs. This worked well and their high quality report was received in less than two weeks. Together with counsel's advice this enabled us to provide a rapid, robust and evidence-based response to the consultations.
17. Specifically, our response highlighted that it is important that the finalised FMPs contain credible coherent delivery plans which set out clear and actionable policies that fisheries

authorities must apply and the specific steps that must be taken to ensure they achieve that goal. We recommended that finalised FMPs switch emphasis to how the goals “will” be achieved with more prescriptive language. We also recommended that finalised FMPs clearly set out the interim steps that will be taken to ensure that stocks are best positioned to achieve Maximum Sustainable Yields, even during any data gathering stage.

18. We will be following up our response through engagement with Defra’s marine policy team in November. We will maintain a watching brief on the finalisation of FMPs as part of our broader work on marine, reviewing the trajectory to achieving GES.

Environmental principles

19. The duty for UK Government Ministers to have due regard to the Environmental Principles Policy Statement (EPPS) when making policy comes into effect on 1 November. We are planning to monitor its implementation as discussed in a separate paper.
20. DAERA officials were grateful to receive the OEP’s advice on the draft EPPS for Northern Ireland and were content that it addressed the issues that they had requested. Environmental NGOs also gave positive feedback on our advice after its publication. DAERA now needs to consider the advice in reviewing the draft EPPS ahead of public consultation, the timing of which is uncertain due to limited resource to progress the work, and ongoing political uncertainty.

Retained EU Law (Revocation and Reform) Act

21. We have received correspondence from Lord Benyon as appended in Annex B. We will publish this letter alongside our earlier exchanges with the Defra Secretary of State. The letter adds little to what we already knew. However, it does confirm that Defra does not intend to restate any directly effective rights before the end 2023, meaning (as suspected) they intend to let issues play out in the courts. We will need to actively monitor case law to determine the extent to which the risks we have flagged, in relation to regression, are realised in practice.

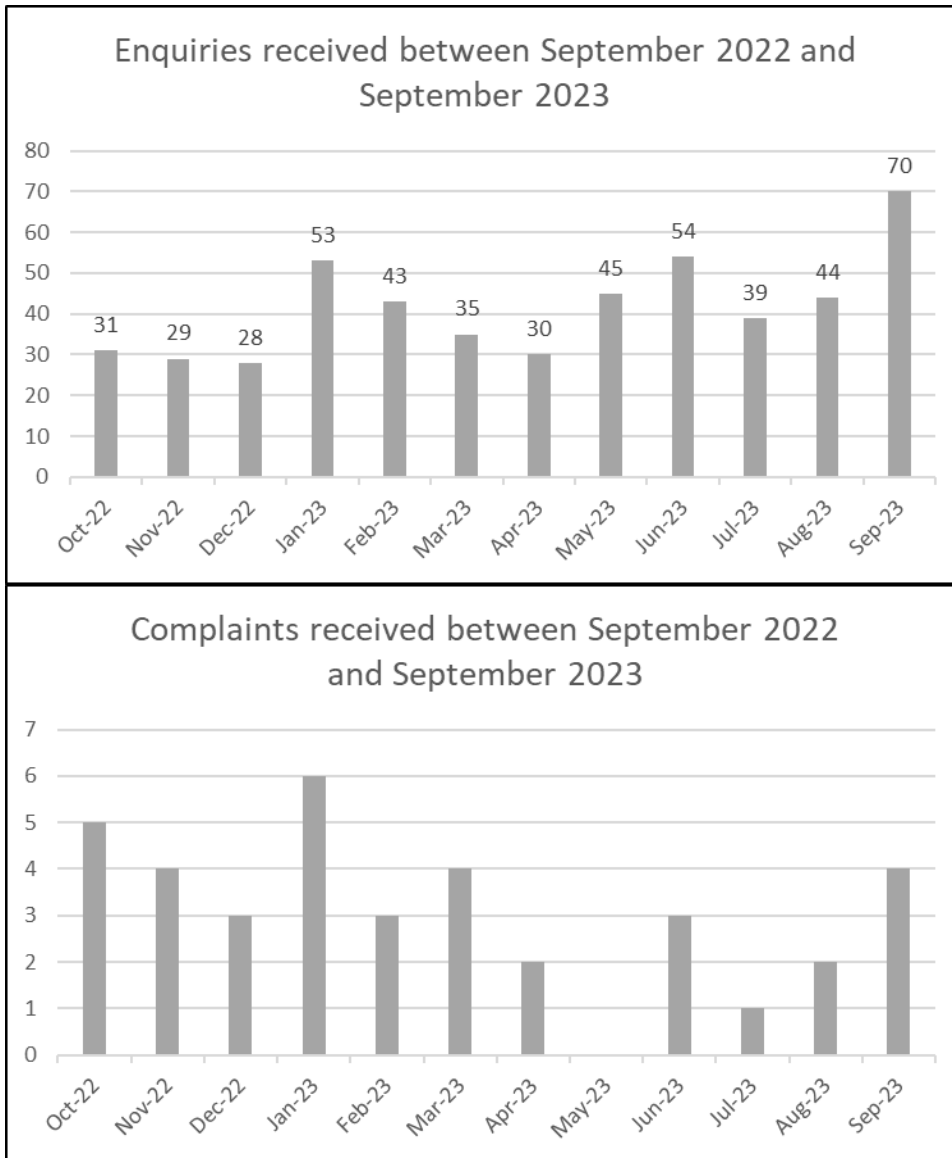
Future plans

22. We are developing our Improving Nature theme into a coherent, long-term programme, to be considered in conjunction with business planning for 2024/25. As a specific step towards this, our business plan envisages work beginning in Q4 on a further ‘nature’ project which will continue delivery into 24/25. We are scoping up this project to be linked to the EIP23 delivery step: ‘creating more joined up space for nature on land’. We expect to bring a proposed strategic intent for this project to the Board shortly.
23. In September 2022 the Board considered the strategic intent for a project to scrutinise how regulators monitor and enforce compliance with environmental law. Due to capacity constraints, work was then paused. The work was, however, included in the 2023/24 business plan for initiation in late 2023, with a view to delivery continuing into 2024/25. We have begun some preliminary work, and now that we are joined by a new Head of Legal Research and Analysis, we are commencing the project in earnest.

Strategic Objective 3 - Improved compliance with environmental law

Complaints and enquiries

24. Since January 2021 we have received 937 enquires and 95 complaints. Since my last report, we have received 5 new complaints and handled 106 enquiries. We currently have 7 open complaints in the assessment phase.



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

25. After a 17-month delay, in September Defra provided copies of four closed EU infraction casefiles. We are reviewing these casefiles to determine what, if anything, they indicate for the OEP's work priorities. Defra has directed us to other departments/devolved administrations for two further casefiles, which we will follow up.

This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs and relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement.

26. On 22 September we acknowledged DAERA's publication of the Call for Evidence for the future Operational Protocol with a high-level response and a number of general observations.

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27. Information Notices were issued to Ofwat, the Environment Agency and the Secretary of State on 7 September 2023. Our statement was published on our website on 12 September and can be found [here](#). The announcement received significant media attention and we briefed relevant stakeholders in accordance with the agreed communications plan.

28. The public authorities now have until 7 November 2023 to respond to our Information Notices. We have invited them to meet with us to discuss the issues in more detail.

29. On 15 September the High Court delivered its judgment in two connected applications for judicial review that sought to challenge the lawfulness of the Storm Overflows Discharge Reduction Plan (SODRP) published by Defra. The applications, by (1) Wildfish; and (2) Marine Conservation Society and others, were unsuccessful on all grounds and therefore dismissed by Mr Justice Holgate. The EA and Ofwat were interested parties to the proceedings and the OEP investigation into the regulation of CSOs was expressly referenced in the judgment.

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30. On 25 September Defra published an updated version of the SODRP to include coverage of coastal waters. The additions to the Plan also mean that Marine Protected Areas and shellfish water protected areas will be added to the 'high priority sites' list, alongside Sites of Special Scientific Interest (SSSI) and bathing waters. The expanded plan will result in an estimated increase in capital investment in the water system of £60 billion to tackle storm overflows, up from the £56 billion announced in 2022.

31. Whilst the improvements to the plan are positive, we do not believe they change our current position for Operation Century. In April 2023 the SoS announced that the SODRP target(s) would be 'enshrined in law' through the Environment Act. To date there has been no further information regarding what the proposed legally binding target(s) will comprise of.

Post implementation reviews and embedding the EPPS

32. We met with Defra officials on 14 August to discuss their response to our report on post implementation review of environmental laws. The meeting was helpful and constructive, and we agreed to ongoing catch-up meetings to keep abreast of their progress and to discuss the wider agenda around PIR and monitoring and evaluation.

33. On 6 October we met with the Regulatory Policy Committee and officials from the Cabinet Office 'Evaluation Task Force' team. We discussed the recently published Better Regulation Framework (BRF) and Defra's new evaluation strategy. We are considering how best to work together to reinforce messaging around the need for ongoing monitoring and evaluation to inform the policy cycle and are exploring opportunities for embedding the EPPS into this cycle – in particular for including reference to the EPPS in future iterations of the BRF. As part of this we will also be meeting with officials from the Better Regulation Executive in the Department for Business and Trade.

Statutory deadlines

34. We brought an update to Board on 28 September, setting out our concerns in relation to DAERA's decision not to adopt the EIP for Northern Ireland, and issues connected to the Northern Ireland Nutrient Action Programme (NAP).

35. We wrote to DAERA officials on 26 September ahead of the deadline to publish an implementation report (incorporating a review) for the NAP on 11 October. We have now published our letter and DAERA's response which gives limited detail of their plans. We are following up on this and will consult further with the Board when we have received further detail from DAERA.

36. We will meet with DAERA officials before the end of October to discuss the renewed draft Environment Strategy that DAERA has provided to us as well as the work programme that it intends to progress in the absence of an EIP.

Strategic Objective 4 - Organisational excellence and influence

Financial management & funding

37. The Board will consider a finance report separately on its agenda. The balance of risk is now towards an underspend, currently forecast to be less than £300,000. This is potentially exacerbated by an in year offer of an additional £150,000 funding from DAERA. The Executive is actively managing this risk, while continuing to seek best value from all our resources.

Resource Bid

38. On 5 October we were notified that the Secretary of State had brought forward the timetable for Defra's resource allocation process, and that our submission seeking the resourcing we need for 2024/25 was required by 19 October. We had concluded preparatory work in advance that allowed us to achieve this timetable. The Board will consider the proposal separately on its agenda.

Recruitment and accessing expertise

39. We expect the majority of our new recruits to be in post by the end of December. The table below outlines the forecast of permanent FTE growth relative to progress to date.

New recruits in post	31 Aug	30 Sep	31 Oct	30 Nov	31 Dec	31 Jan
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OFFICIAL

Original forecast	5	13	24	24	25	26
Actual to date (including confirmed start dates)	8	10	10	14		
Of which permanent	4	5	5	9		
Of which temporary	4	5	5	5		

40. While we have 14 new staff with confirmed start dates before the end of November 2023, compared with the 24 we intended to be in post, we have eight further offers made. Most of these are at grades where notice periods are typically shorter. This includes recruitment to our first apprenticeship post.

41. One candidate has withdrawn at offer stage (Procurement Officer) it is likely we will bridge the gap by extending contingent labour.

Wave 1 and 2 (perm and temp)	Regulatory	Insights	Chief of Staff	Legal	Total
Start date agreed		2		1	3
In post	5		1	5	11
Offer made	1	1	3	3	8
Internal appointees	3			1	4
Interview					
Sift					
Advert live		1	1		2
Draft advert			1		1
Not started	1				1

Other Recruitment

42. Other permanent and temporary recruitment due to natural attrition, backfill due to promotion or additional temporary posts that have been created:

Other Perm and Temp Recruitment	Regulatory	Insights	Chief of Staff	Legal	Total
Start date agreed					
In post			4	1	5
Offer made	1				1
Internal appointees					
Interview					
Sift					
Advert live		1*			1
Draft advert	1				1
Not started					

*Short term appointment

43. We have offered 58 of 106 applicants a place on the College of Experts and we are in the process of conducting security checks and having introductory conversations with members.

Premises and hybrid working

44. We have now occupied our office space in Worcester. Staff feedback has been positive, and there have been few issues to be resolved in early weeks. We are delighted the Board will meet in Wildwood for the first time. The technology solutions allow us to work significantly more effectively in the hybrid way that is essential to work effectively across our England and Northern Ireland remits.

45. Total Capital spend has come to approx. £1.23m, and Finance confirmed we will seek an additional £131,701 from Defra, needed for capital.

46. Following a service review and consulting Northern Ireland-based staff, the decision was taken to extend our existing contract with VenYou for the Scottish Providence Building space, for another 24 months. The contract will now expire in November 2025. A small discount was secured for the provision of service of this length.

IT development

47. We have signed a one-year extension of our contract with Boxxe. Discussions are continuing with the procurement framework owner to extend by a further year, to November 2025, as the Board agreed.

48. We have agreed a scope for a project to deliver improvements to the website. This will iteratively deliver improvements through the second half of the year.

49. We are mid-way through a project to assess the effort and complexity of migrating from our Valiantys hosted Complaints Management System to the Atlassian Cloud. This is being worked on in conjunction with the C&I team.

50. We are mid-delivery of the Intelligence Management System, with a proposed live date during November.

Working with our sponsor departments and agencies

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51. We have continued to seek to agree written protocols for the administration of Defra's cooperation with us, through a ways of working document. This focuses so far on how we establish relationships with policy teams in Defra, how we engage with each other in a 'safe space' to allow us each to understand the relevant context that will inform the work we each do, and how we give notice of the information we expect to request, so that Defra can prepare to deliver it to us, and inform us of any material challenges to doing so promptly.

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52. Our working relationships with DAERA continue to be generally constructive. We have received DAERA's draft proposal for 'ways of working' with OEP and have been invited to comment. It is refreshing, and we have found little on which to comment and less with which we take issue or object. DAERA make a number of positive statements about why its staff must cooperate with the OEP, and how that cooperation should be conducted, that we have made to Defra. We are seeking to encourage DAERA to adopt this guidance promptly. We see that it may be helpful to our position and discussions with Defra, in due course.
53. There is no progress in agreement to a framework document. We continue to await the Minister's formal response to the document the Board agreed, and which had been agreed by Defra, DAERA and HM Treasury officials.

Selected stakeholder engagement

54. Notably following our announcement on 12 September there was an uptake in our invitations to meet with political stakeholders that previously hadn't responded to our approach to engage with them. With this in mind, we plan to strategically approach those stakeholders we have difficulty engaging with after making significant announcements about our work.
55. Since my last report, we have arranged meetings with Tim Farron MP and Ed Miliband MP. We are seeking to meet with the shadow Defra ministerial team, and will offer to support the Leader of the Opposition's office in its stated interest in establishing new oversight bodies to ensure government's delivery against long-term targets and objectives.
56. Dame Glenys spoke at the Forestry Conference, while I spoke at the Westminster Forum event on Marine Protection and at the Protect Conference in relation to their new environmental whistleblowing toolkit.
57. In response to stakeholder feedback we have taken steps to improve how we coordinate the asks we make of our stakeholders, including formal and informal requests for information. This has included a workshop with ALB colleagues to start developing a 'ways of working' document to formalise and agree the approach. Our intention is for this to be high-level and set out principles for engagement that can be applied to a range of organisations we engage with.

Delivery update

58. The Executive Committee monitors the delivery of our business plan and our public commitments made in the corporate plan twice each quarter. We review our progress, financial forecast, procurement pipeline and recruitment alongside our strategic risks.
59. At the end of October, 76% (35) of our commitments are on track to be met by the end of this financial year. Eight commitments are at risk and three off track. Of those at risk, two relate to delay to the expected publication of our environmental law reports – we now expect our reports into bathing water and protected sites to be published in Q1 2024/25. The third is our commitment to develop our ways of working with Defra, given the challenges well known to the Board. Annex C provides an overview of our delivery against the Board approved corporate and business plan.

Impact Assessments

Risk Assessment

60. Annex D provides the current Strategic Risk Register. There are currently nine items on the register.

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Equality Analysis

61. No material equality implications have been identified in this paper.

Environmental Analysis

62. This report gives an overview of strategic organisational developments which support the OEP’s principal objective. Consideration has been given in each case to how the activity contributes towards environmental protection and enhancement, and to ensuring the OEP meets relevant duties in environmental law. No specific proposal in this paper has a direct bearing on those duties.

Paper to be published	In part
Publication date (if relevant)	With meeting minutes
If it is proposed not to publish the paper or to not publish in full please outline the reasons why with reference to the exemptions available under the Freedom of Information Act (FOIA) or Environmental Information Regulations (EIR).	<p>FOIA/EIR exemptions for which we propose not to publish this paper in full are:</p> <ul style="list-style-type: none"> • publication would harm relations between UK and NI governments (s.28) • publication would harm the effective conduct of public affairs, including the Board's ability to receive candid advice and engage in free and frank discussion (s.36) • publication would reveal information subject to legal professional privilege (s.42) • publication would harm the OEP's commercial interests (s.43)

ANNEXES LIST

This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs or is information already in the public domain