

Board Paper

Paper 22.61

Date

31 August 2022

Title

Report of the CEO

Report by

Natalie Prosser, CEO

Paper for information

Open in part

Summary

1. This report brings to the board's attention three matters of particular and immediate strategic importance: the wider political environment, the increasing proximity of decisions in relation to the use of our enforcement powers, and the challenges of balancing our resourcing needs. It goes on to summarise key areas of activity in relation to each of our strategic objectives.

Recommendations

2. The Board is recommended to:
 - Comment and advise on the strategic issues highlighted
 - Note progress in delivery of our strategic objectives.

Three strategic issues

3. During July and August, we published our advice on environmental targets, provided advice on marine net gain and the Levelling Up and Regeneration Bill (LURB). Today the board is asked to consider developments in our approach to expert panels, transparency, our next 25 YEP report and its governance and our first complaint enforcement decisions. In addition, there are three pressing strategic issues for the Board's attention.

Political uncertainty

4. The new prime minister and reconfigured cabinet face exceptional challenges: an energy crisis, a cost of living crisis, and the prospect of a winter of discontent, all set against the backdrop of the ongoing war in Ukraine and consequential geopolitical instability.
5. By the time of the Board meeting, we should know who the new Prime Minister is and will possibly have details of the Defra Ministerial team. We are unlikely to know what the implications are on the current or future policy agenda. The Board's reflections on the current political situation and its implications for the OEP (and for the environment) would be welcome.

Enforcement proximity

6. In the meeting, colleagues from our Regulation Directorate will present an update on *this section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement* and provide an opportunity for Board members to ask questions and make comment on progress.
7. In addition, the Board will be briefed in relation to an emerging issue of government non-compliance with statutory deadlines. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs and it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement.* Ahead of that potential proposal, I would like to invite comment from the Board on the issue.
8. Finally, there is an emerging opportunity that could deliver a useful clarification of the law in relation to Environmental Impact Assessments. This would be undertaken through an intervention in live proceedings before the Supreme Court. More information in this is set out below (Paragraphs 37 to 40).

Resourcing

9. Since the last Board meeting, we have completed two substantial rounds of assessment and re-forecasting against our budget allocation. The second such exercise included our first sensitivity analyses against those forecasts. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.* We have a reasonably high degree of confidence in these figures. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*
10. Our capital underspend represents a saving and good use of public funds in procuring better value accommodation. It is not an area of particular concern. These funds can be returned to Defra with a clear explanation as to the change in circumstances.

11. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.* The finance paper on today's agenda contains much more detail on the forecasting against budget, directorate by directorate.
12. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*
13. As we now understand the issue, we are taking steps to address it as much as possible. Executive Directors have identified a range of work packages, linked to the current business plan, that could be accelerated through commissioned activities. These should either enhance current programmes or constitute an investment in the OEP and OEP staff that would yield benefits in the longer term. In addition, we will renew efforts to appoint to the temporary posts that we need through other channels, such as contingent labour. This will inevitably come at greater cost than from secondees. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.* I will have an initial analysis on the forecast costings of these work packages by the time of the Board meeting.
14. In terms of Insights capacity, interviews are scheduled over the next month for all of the vacant posts and the recruitment of a new CIO is live (as noted in paragraph 75 below).
15. I would welcome any views or advice that the Board has on what balance to strike between financial, delivery and reputational risk in this and future years, *this section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.* fWhilst we reassess where we could accelerate activity to address the underspend and de-risk delivery, I am clear that we should be transparent with Defra as our funding body in signalling where we might return budget this financial year and to do so soon. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

Strategic Objective 1 - Sustained environmental improvement

25YEP Report Monitoring

21. Following the publication of our Taking Stock report in May, Defra published its [Annual Progress Report](#) on 20 July 2022. The then Secretary of State sent a short letter (Annex 1) in response to our report, explaining that a more comprehensive response would be included in the revised Environmental Improvement Plan (EIP) next year. The Secretary of State noted that Defra intends '*for the EIP to become the main environmental work programme for the department, and wider government, to drive outcomes and focus on delivery.*'

22. In the letter the Secretary of State was supportive of all of our main recommendations, including; the need for a comprehensive and systemic approach; the need to bring order to the existing suite of 'legacy' targets which are currently outside of the Environment Act, the need to improve monitoring (with Defra working to publish data for the full set of 66 indicators by 2024) and working with the ONS to expand how data and statistics are used.

23. We have now finalised our response on the Northern Ireland Environment Strategy becoming the administration's first EIP. Our response is broadly supportive whilst outlining that further development is needed to bring about significant environmental improvement. We also set out the framework that we are likely to use to provide scrutiny of the EIP and annual reports, developed from 'Taking Stock'. We intend to send this by early September and publish shortly thereafter.

Environmental Targets advice

24. Following the extraordinary Board meeting on 8 June we submitted our advice on environmental targets and published it on 4 July. Whilst we are yet to receive detailed feedback on our advice, the Chair and I discussed it with the Secretary of State on 5 July. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.* Our advice is not specific to the species required in the list. It does however note that the species abundance indicator is not sufficiently representative, focussing on terrestrial species. Our advice states that it should capture an adequate and wide cross-section of species, in particular marine and freshwater species.

25. Our advice on PM2.5 supports government's initial target level of 10 ug/m³ rather than the WHO level of 5 ug/m³. Some stakeholders take a different view. We have developed key messages to explain our position on the target level.

Soil Work Programme - update

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

Strategic Objective 2 - Better environmental law, better implemented

Environmental Principles

27. Defra's revised draft Environmental Principles Policy Statement was subject to scrutiny in Parliament in June and July. We wrote to Baroness Parminter, Chair of the House of Lords Environment and Climate Change Committee, setting out some observations on the statement, including the extent to which it reflected our earlier advice. We subsequently sent a copy of the letter to Philip Dunne MP, Chair of the House of Commons Environmental Audit Committee (EAC).

28. Both the Lords and Commons Committees have welcomed our input. Baroness Parminter wrote to Minister Pow referencing and agreeing with our view. Philip Dunne raised the issues we had flagged with the Secretary of State during evidence on 23 June. The EAC's [report](#), published on 28 July, calls for swift implementation of the finalised policy statement, followed by a thorough review after 12 months on the basis of worked examples. It also calls on ministers to heed our advice in general on the implementation of the environmental

principles in policymaking. The EAC clerk suggested that the Committee would welcome our views on the eventual content of the statement.

29. We continue to engage with Defra to monitor its approach to finalising and implementing the Statement, and to emphasise the important role it needs to play in embedding a coherent approach to considering environmental protection when making relevant policy across government.
30. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs and its publication would be prejudicial to relations within the United Kingdom.*

Nature work programme

31. We have started to analyse the implementation of environmental law concerned with certain environmental assessments (Habitats Regulations Assessment, Strategic Environmental Assessment and Environmental Impact Assessment) in England and Northern Ireland. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*
32. We received a short response from the Defra Secretary of State (Annex 2) on our green paper advice. He notes that our advice provides “*a useful framework that will be valuable in informing future policy thinking*” and agreed that any proposals brought forward must have the clear purpose “*to improve and strengthen our designated sites network and to protect and recover nature at pace*”.
33. We have started to build a positive working relationship with the policy team in DLUHC. They are keen to exchange information and agree when the most appropriate point to specifically request our advice on their proposed legislative reforms would be. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*
34. We are developing a fuller articulation of the strategic intent for our nature work programme to include our theory of change and intend to bring this to the Board at a future meeting.
35. In the meantime, we have written to the Public Bill Committee for the LURB to make a limited number of high-level points aimed at positioning ourselves for maximum impact with this work. A copy of this evidence is appended to this report (Annex 3).

This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs and it contains legally privileged advice.

Water work programme

36. We are currently scoping activity to monitor and report on the implementation of environmental law that supports freshwater and coastal water quality. As part of the evaluation of River Basin Management Plans (RBMPs) in England and Northern Ireland, we have made an initial assessment of the drivers and pressures causing nutrient, sediment and ammonia pollution across the aquatic environment. This will help us to prioritise areas to investigate further as part of the programme.
37. We are also currently considering responses from Defra and DAERA to our letters concerning the delayed RBMPs, which were due in December 2021 and have not yet been

published. Both departments have said that the delay was due to resource constraints caused by the Covid pandemic. Defra's reply anticipates publication of the RBMPs by 22 December 2022. DAERA have advised that Minister Poots has asked for their RBMP to be complete by the end of September 2022, while noting that sign off currently is not possible as the Executive is not in place.

Marine Net Gain Consultation

38. In response to Defra's consultation on the principles of marine net gain, on 26 August we sent a letter to Lord Benyon who now holds much of Minister Pow's previous portfolio.
39. We are grateful to Dan Laffoley for his advice and expertise in supporting the response, attached at Annex 4. Our high-level strategic response reinforces relevant points in our advice on biodiversity net gain and makes connections with our recent work on the 25YEP, Joint Fisheries Statement and the nature recovery green paper.
40. The policy is in its preliminary stages and, whilst we welcome the overall ambition, we highlight there are significant challenges for government to address to ensure its success. Not least we note that it needs to form part of a coherent plan for marine recovery in the necessary timescales.

Upcoming government consultations

41. We continue to screen government consultations in England and Northern Ireland. Following our responses to several related policy proposals, we intend to write to Lord Benyon on the current consultation on Highly Protected Marine Areas. Our intention is to reiterate the message in our 25YEP report that government must take action to improve coherence and integration across policy areas, aligning them with the ambition of the 25YEP.
42. There are currently no other live consultations that we plan to respond to. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

Air quality work programme

43. Our work on air quality has developed to better scope ambient outdoor air quality issues, to ensure we are ready to respond well to the UK Government's plans for tackling air quality problems. A consultation on the revised draft National Air Pollution Control Programme (NAPCP) has just opened. As part of our research, we will assess the contents of the NAPCP but not respond to the consultation.
44. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs and it contains legally privileged advice.*
45. We expect consultation on the government's Air Quality Strategy in November/ December for both England and NI. We also expect DAERA to publish its Ammonia Action Plan for consultation in December. We aim to issue an invitation to tender for independent research to inform our responses to these consultations.

Strategic Objective 3 - Improved compliance with environmental law

Complaints and enquiries

46. Since 1 January 2021 we have received a total of 58 complaints – with six in July and two in August. In total, 25 complaints meet all the criteria for complaining to the OEP. We have completed the assessment of 12 of these, six assessments are on hold and seven are ongoing. We also self-initiated an assessment during this period.
47. Eighteen complaints do not meet the criteria and we have let the complainants know and signposted them to the correct public authority, where appropriate. The remaining 15 complaints are in progress, pending further information from the complainant or public authorities.
48. Since 1 January 2021 we have received and responded to a total of 375 enquiries.
49. We have four new Northern Ireland specific cases (eight in total). *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

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

50. The *this section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement* investigation, announced on 28 June, considers the roles of Ofwat, the Environment Agency and the Defra Secretary of State in the regulation of combined sewage overflows (CSOs). The investigation aims to determine whether these authorities have failed to comply with their respective duties in relation to the regulation, including the monitoring and enforcement, of water companies' own duties to manage sewage. In doing so, we seek as a first step to clarify the authorities' respective duties and obtain agreement from all parties as to those duties.
51. On 27 June, we wrote to the three public authorities under investigation, informing them of the investigation and requesting information. All three responded by 5 August providing documentary evidence which supported their respective positions that they are complying with their respective duties.
52. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*
53. The law firm Leigh Day made an application for judicial review on behalf of their clients Wild Justice, against Ofwat for failing to ensure that sewage treatment plants are fit for purpose. A permission hearing has been scheduled for the end of September 2022, which we will attend to observe.
54. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

Marine work programme

55. *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.*

EU infraction cases

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

Strategic Objective 4- Organisational excellence and influence

57. As we continue building the OEP, the Executive Committee (ExCo) are regularly monitoring and managing performance within our newly created, monthly, Performance, Delivery Review (PDRM) meetings. These include active consideration of our live strategic risk and issues register.

Finance

58. The audit of the Annual Report and Accounts (AR&A) is underway. While the audit should be complete at the beginning of September, it will be tabled to ARAC at the meeting on 27 September and laid before Parliament and the Assembly during the week commencing 17 October (as soon as Parliament's conference recess ends). This delay is due to staff shortages at the NAO and a short window between recesses.

59. The Q1 Finance report is tabled separately on the agenda and provides an update on our in-year forecasting, *this section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

Delivery

60. ExCo has scrutinised our business plan delivery, which reflects our corporate plan commitments. Annex 5 provides an extract of this performance information at the end of quarter 1.

61. An overview of the key deliverables for 22/23 is provided by the 'plan on a page' (Annex 5 page 2). This illustrates progress on strategic projects. Not all lines of the approved business plan are reflected here, as a large proportion are business-as-usual or team level items. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

62. As we mature, ExCo will also consider the key management information on our performance. We are embedding a performance framework across the OEP. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.* Available metrics for quarter 1 are also included in Annex 5. The dataset will expand as we collect and collate intelligence that we deem relevant to assessing our performance, though in our first operational business year and without benchmarks, wider sources continue to provide a fuller understanding of our progress and areas for improvement, as reflected in this report.

Recruitment and Resourcing

63. Resourcing pressures are most acute in the insights Directorate. With the departure in September of its Executive Director, recruitment activity is well underway to fill seven posts within the Directorate. This includes a search for an interim Chief Insights Officer, whilst we run a permanent recruitment campaign. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.* The primary mitigation is to complete recruitment of the Insights team. Up to eight new staff are expected to be in place from November and could commence work immediately on these priorities if we succeed in mobilising them all quickly and effectively. We will continue to keep the Board informed on progress and the status of these risks.
64. Progress in recruitment to our full permanent organisation design and temporary roles is mixed. Interest in permanent roles remains strong, and we are attracting quality candidates, including for those roles where we seek Northern Ireland expertise. We have 18 permanent vacancies with recruitment campaigns ongoing.
65. By contrast, we have not succeeded in filling a number of temporary roles. Seven advertised roles yielded no applicants from within the civil service (plus eligible staff at non civil service ALBs). We prioritised advertising within the civil service first, given shorter lead times (typically one month from appointment, rather than three). Anecdotally, potential applicants tell us the combination of recruitment freezes in the wider civil service is making managers reluctant to support applicants on secondment, and the risk of return to a redeployment pool at the end of a 6-9 month term, is unattractive to applicants.
66. We are therefore advertising roles externally, turning to contingent labour where we must, seeking to use networks where we can, and seeking to be opportunistic. We have, for example, appointed an additional permanent lawyer beyond planned, given a high-quality field.
67. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*
68. The campaign to fill the permanent Chief Insights Officer role has begun, utilising the services of Gatenby Sanderson, once again. Gatenby Sanderson are also leading the process to appoint an interim Chief Insights Officer.

ALB Review

69. [Defra's review of the OEP](#) under the ALB review programme has concluded and is published. The review only completed its first scoping phase. It found us in good shape and concluded that a full independent review was not needed. We are implementing the recommendations. Most were already planned activity.
70. The review did not comprehensively assess our funding needs; we were not in a position to provide the necessary evidence for this assessment at this stage and were not asked to do so. Defra has committed to review our headcount and resources this year and next, which is welcome. Defra will do this through its normal planning process, and not by way of an independently led review.
71. Planning for the work necessary to support that bid is underway, leading to an executive strategy day in October, and a Board discussion on 27 October. The broader context of public finances has significantly deteriorated in the last six months; a fact that Ministers and Defra officials emphasise to us. Defra is planning for a full revision to the spending review of 2021 once the new Prime Minister is in post, and has started to commission material

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

This section has been redacted as its publication would be prejudicial to commercial interests.

72. My last report confirmed that Heads of Terms were agreed for the OEP office space at *this section has been redacted as its publication would be prejudicial to commercial interests.* Defra Group Property (DgP) have since instructed their solicitors. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.* We anticipate that the lease will be finalised by late October, allowing confirmation of a realistic timeline and move date, likely in the spring.
73. Lease negotiations are dependent on a Property Control Approval Request amendment, which we have submitted, and responded to Cabinet Office queries about the seemingly low office space to organisational FTE ratio.
74. We have agreed a high-level concept design for the office space, in consultation with staff. *This section has been redacted as its publication would be prejudicial to commercial interests.*

75. We have explored the option of the NI Audit Office being a touch-down space for the OEP homeworkers in Northern Ireland. We have found, however, that this does not represent good value for money. We continue with work to identify touch down space for NI based staff and visiting Worcester based staff.

People Strategy

76. Following a lessons learnt exercise we sought staff views on the goals and actions proposed for our people strategy, taking particular care to ensure that feedback from the lessons was addressed in the draft strategy. We see opportunity to use some forecast underspend to accelerate progress of delivery of our people strategy by outsourcing elements, such as the design and delivery of a regular people survey, internal events and communication preference profiling. We intend to bring an updated draft people strategy to ExCo for approval in September.

Memorandums of Understanding (MoUs)

77. We have finalised our MoU with the Committee on Climate Change (CCC). As required by section 26 of the Environment Act, the MoU outlines how we intend to co-operate and avoid overlap in the exercise of our respective functions.
78. On 31 August I met with the Parliamentary and Health Services Ombudsman (PHSO) to sign an MoU with them. A similar MoU is in the final stages of signing with the Local Government and Social Care Ombudsman.

Communications

79. We are implementing our communications strategy and stakeholder engagement plan.
80. On 5 July Dame Glenys and I met with the Secretary of State to complete our first Ministerial review. *This section has been redacted as its publication would be prejudicial to*

the effective conduct of public affairs. Our responsible Minister is now Lord Benyon, pending any changes in the coming days.

81. Dame Glenys also met the new chair of the EFRA committee, Sir Robert Goodwill. We continue to expect our primary engagement to be with the EAC and aim to meet Phillip Dunne in autumn. We see opportunities to continue to build our relationships with Parliament and to learn from Committees on how we can maximise influence.
82. In August, I met with the Marine Conservation Society, the CEO of the Coal Authority and the CEO of the PHSO.
83. I followed up an ENDS Webinar broadcast in May with an [interview in the ENDS report](#) published 25 August, which is complimentary of our early progress.
84. We have re-established regular working level meetings with Environmental Standards Scotland and the Welsh Assessor and have considered the approach ESS takes in developing our own approach to publishing information about non-statutory interventions and transparency more widely.
85. In September, strategic engagement activity includes our Chair speaking at the Westminster Energy, Environment & Transport Forum about our strategy and enforcement policy and the Social Contract Summit on system wide regulation specifically that related to the water industry. I will address the Oxford Joint Planning Law Conference at their 50th anniversary conference. We are also scheduled to meet with Lord Benyon, Shaun Spiers and Ruth Chambers of Green Alliance, Tony Juniper and Marian Spain of Natural England, River Action UK and the CEO of the MMO.
86. We will seek to start building the relationships we need with those relevant new ministers appointed by the new Prime Minister, at the earliest opportunity.

Impact Assessments

Risk Assessment

87. The full strategic risk register is appended as Annex 6 to this paper. An overview is shown in Figure 1.
88. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

Equality Analysis

89. No material equality implications arise from the issues in this paper. Equality, diversity and inclusion will be a relevant consideration as we develop the People Strategy.

Environmental Analysis

90. No material environmental law issues arise from this paper.

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	FOIA/EIR exemptions for which we propose not to publish this paper in full are:

<p>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>	<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 harm the OEP's commercial interests (s.43)
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ANNEXES LIST

Annex 1- Letter from SoS to Dame Glenys Stacey on Environmental Improvement Plans

Annex 2- Letter from SoS to Dame Glenys Stacey on our Nature Recovery Green Paper Advice

Annex 3- Evidence to the Levelling Up and Regeneration Bill Committee

Annex 4- MNG letter from Dame Glenys Stacey to Lord Benyon

Annex 5- *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

Annex 6- *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*