



Interim Office for Environmental Protection

Minutes

Meeting of the Board

Thursday 1 July 2021 - 9.30am

Pear Tree Inn, Smite, Worcester

Members in Attendance

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

Attendees

Peter Ashford	Head of Legal
REDACTED (item 21.07)	Team Leader, Complaints and Enforcement
Neil Emmott	Head of Complaints and Environmental Law
REDACTED (item 21.08)	Team Leader, OEP Establishment
REDACTED (item 21.10)	Team Leader, Scrutiny and Advice
REDACTED	Chief of Staff (acting as Board Secretariat)
Maniv Pathak	Head of Insights and Analysis
Sandy Rowden	Head of Establishing the OEP
REDACTED	Diary Manager

21.01 **Welcome and apologies for absence**

The Chair-designate welcomed all to the inaugural Board meeting of the Interim OEP. There were no apologies for absence.

21.02 **Declarations of interest**

There were no declarations of interest.

21.03 **The draft objectives and duties of the OEP**

The Head of Legal gave a presentation on the current provisions of the Environment Bill as they relate to the OEP. He outlined the statutory provisions relating to the OEP's constitution, governance, and decision-making.

Members considered the principal objectives of the OEP, the functions the OEP is to have in its statutory form, and some core definitions in the Bill – particularly those relating to the natural environment, environmental protection and environmental law. The legislation provides a certain framework, but there is wide discretion in how the OEP is to further its principal objective, and some of the Bill's provisions will require considered interpretation. It is not lawful for the OEP to act beyond its legal framework, and these interpretations will matter.

The Board noted that the draft provisions of the Environment Bill provide for the Board to be active in the OEP's decision making processes, particularly the sequential steps necessary for enforcement. These steps require a judgement of seriousness and a greater degree of certainty at each stage.

This section has been redacted as it contains legally privileged information.

The Board recognised that it must set an example in terms of good governance, culture, and decision-making for the wider OEP, and in its propriety. It discussed the importance of the OEP speaking with one voice, and that the primary voice of the OEP is its Chair and CEO.

It noted the Terms of Reference which provide for the Interim OEP to be established prior to the Environment Bill as a guiding framework for the interim body.

21.04 **Interim OEP Governance**

The Chief of Staff introduced the paper, including the Terms of Reference for the Interim OEP. The Board noted these Terms, its own role in taking decisions for the interim body, and that the staff of the Interim OEP would work under its leadership and direction.

The Board considered the draft Governance Framework proposed, including the proposed matters reserved to it, the matters to be delegated and the procedural rules for the Board to take decisions. It noted the forward plan of its business presented, and that this would be further developed by officers, providing visibility for the Board on matters for it to decide, and those being considered by the CEO and her senior leadership team.

A discussion was held on the most appropriate arrangements for managing any conflict of interest arising for any Member during the Board's business.

The merits of arrangements which provide for broader discretion on how a conflict can be managed, such as by allowing a Member to participate in discussion but not vote, were discussed. The Board judged that the nature of the decisions it is to take, and the small Board membership, argue in favour of Members not participating in discussions if any significant conflict is determined. The Chair has discretion to consider the significance of any conflict, taking advice from the General Counsel and the senior officer responsible for governance.

The Board recognised the importance of information security and noted that all correspondence to it (other than of an administrative nature) would be through the email accounts provided for that purpose.

The Board **AGREED** to adopt the Governance Framework subject to:

- The inclusion of square brackets at paragraph 9(e), to provide for the fact that executive Board Members would not be appointed ahead of OEP vesting.
- Clarity that paragraph 14 of the 'Rules for dealing with conflicts of interest' applied to significant conflicts, as referred to in paragraph 13.

The Chief of Staff is to develop an operating protocol for Board members to develop the rules for dealing with conflicts of interest set out in the draft Governance Framework.

ACTION

The Board considered the draft terms of reference for the proposed 25-year environment plan monitoring report steering group. It debated the extent to which independent membership would augment this steering group in this first interim year. This had been provided for in the terms of reference but was not proposed. The Board concluded that independent members should not be sought at this stage, noting that the rules of procedure allow the steering group to invite any person to attend its meetings to support consideration of items of its business.

The Board **AGREED** to establish a 25-year environment plan monitoring report steering group as a Committee of the Board under the terms of reference proposed and noted that Paul Leinster and Julie Hill had been nominated and agreed to serve as members. The Board is to consider the report further at its August meeting, with the benefit of the steering group's advice.

The Board **AGREED** to meet in accordance with the schedule of meetings subject to:

- An alternative date being sought for September
- Consideration being given to meeting in person more frequently in this formative stage of the Board and organisation.
- Consideration being given to further discursive sessions for the Board, ahead of its main meetings, in this initial phase of its establishment.

The Diary Manager is to consider appropriate arrangements, including for initial meetings for the Audit and Risk Committee to be constituted. **ACTION**

21.05 **Interim CEO Report**

21.06 **Questions from the Board**

The Interim CEO presented her report and took questions from the Board. She outlined the progress made in establishing the Interim OEP and the OEP, preparatory work undertaken towards developing the OEP's strategy and functions, and the activities underway to deliver the interim environmental governance functions required of the Interim OEP. The Board commended the extent and quality of work completed.

The Board noted the update on finance, recruitment, premises and infrastructure. It discussed the challenge of recruiting a diverse workforce, representative of the country, in an industry which has its own diversity challenge. It noted the extent to which recruitment had been widely advertised, including through appropriate networks, and recommended additional BAME representative groups that could be explored.

The Board questioned the environmental credentials of the proposed premises and noted that these were the most sustainable premises currently available in Worcester meeting OEP's needs. All OEP staff will have an expectation of being in Worcester at least some of the time, and this does not seem to be detracting from the number and quality of staff recruited. Policies for future hybrid working arrangements are intended to be co-developed with staff recruited, in line with the frameworks developed by the wider civil service.

The Board is to consider a suite of HR strategies at its next meeting.

The IT infrastructure development was explained, and the Board commended the OEP's branding and website which had been launched. Members sought assurance on the extent to which the OEP would have capacity to manage critical failures in the IT infrastructure such as through a cyber-attack – arrangements are being explored for continuing support from the Defra group, or wider government services.

The Board discussed the deliberation of the Northern Ireland Assembly on whether the OEP's remit would extend to Northern Ireland. It noted that there is uncertainty in the political context, given a new DUP leader has been elected.

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

The Board acknowledged that Northern Ireland has some different environmental law and challenges to England, and that the OEP's strategy, functions and operations would need to be appropriately differentiated for the Northern Ireland context.

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The Board discussed the extent of stakeholder confidence in the Interim OEP, and stakeholder expectations for it. It will be important to develop the OEP's engagement strategy alongside and augmenting its communications approach. It was understood the extent and tenor of the engagement to date had been broadly welcomed.

The Board noted the report. It requested that further information on the complaints received, and staff recruited to the OEP be included in future reports. **ACTION**

It was also reported that the OEP's risk framework is to be developed and will be brought to the Board at a future meeting – programme risks are being captured and reported.

21.07 **Mission, Diagnosis and Guiding Policy**

The paper was introduced in context of the overall approach planned to develop the OEP's strategy. It was noted that this paper was the first stage of the Board's discussions on strategy.

The mission statement is intended to be a clear high-level explanation of the OEP's purpose, drawn from the Environment Bill. It will be a foundation for how the OEP describes itself to staff and externally. The Board welcomed the statement. Recommendations were made for revisions to its language to make it briefer and more impactful, including the order of the descriptions of OEP's functions. The Board asked that the description that OEP 'enforces' environmental law be considered, as this could cause confusion.

Subject to consideration of its comments, the Board **AGREED** the mission statement presented.

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The Board endorsed the work undertaken to date, and the usefulness of the guiding policy at this stage of the OEP's development. Subject to consideration of its comments, the Board **AGREED** the diagnosis and guiding policy presented.

21.08

Organisational Design

The paper set out the context, adopted design principles and organisational structure developed for the OEP. It was noted that, by necessity of time, this organisational structure is already being recruited to.

The organisational design intends to ensure that the OEP is a porous, flexible and adaptive organisation: a majority of staff will be able to be deployed across the OEP's functions, as priorities are identified. The hierarchy is shallow with only four organisational layers.#

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The structure is appropriate for the initial establishing phase, while better understanding is gained of the volume and complexity of operational demands the OEP will face, and of its strategy for how to exercise its functions, some of which can be designed to be delivered in different ways and at different scale. The structure and size of the OEP is expected to be reviewed within 12-18 months under the tailored review or similar programme.

The Board welcomed the design and endorsed it as a sound structure for recruitment. It questioned how and where 'horizon scanning' activities would be undertaken. This function is one which is not discrete within the OEP at this scale. Further consideration will be given to how this is to be managed. **ACTION**

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

21.09

Advice on the draft principles policy statement

The Board considered the proposed advice on the draft principles policy statement, and the analysis included in the paper on the rationale for such advice, its tone and whether it should be published.

The Board noted the intention to publish the advice and the outline communications approach highlighted in the paper. Ministers and officials are aware that the OEP intends to publish and the Environment Bill requires the OEP to publish any advice it gives.

The Board discussed the importance of the environmental principles within the overall environmental governance landscape, and that the policy statement is critical to these having effect in practice. It endorsed the analysis presented in the paper that there are areas where the statement could be improved.

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The Board noted the tenor of the response, and the depth of the underpinning analysis. It **AGREED** to approve advice in substantially the form included in the paper for submission to the Minister and **AGREED** to delegate approval of the final form of the advice to the CEO in consultation with the Chair.

21.10

Provision of advice by the Interim OEP

The Board considered the paper outlining options for how the Interim OEP could exercise its interim environmental governance function to provide advice to ministers or respond to public consultations within its expertise.

The Board sought assurance on the Interim OEP's capability to provide advice across the matters requested by ministers to date and noted the expertise within the interim staff and the Board on the Habitats Regulations, alongside the opportunity to secure external skills where needed. The Board **AGREED** to respond to any consultation on the civil procedure rules, and to provide advice on the proposed amendments to the Habitats Regulations and respond to the Green Paper consultation as had been requested.

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The Board **AGREED** to commence work to develop a proposed response to the environment strategy consultation in Northern Ireland, and to continue to influence within Defra with the objective of providing advice prior to the public consultation on environmental target proposals early in 2022, subject to consideration of an appropriately governed structure.

The decision tool to inform the priority to be afforded to any further opportunities to provide advice was considered.

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It was noted that our early response to the environmental principles policy consultation may set expectations that cannot be sustained. It was likely that the Interim OEP must be selective in the matters it seeks to provide advice on. Stakeholders should understand this.

The Board **AGREED** that the Interim OEP will not proactively respond to matters beyond those identified in the paper, unless the decision tool strongly indicates we should, and that requests from ministers should be prioritised. It also **AGREED** that new proposals would be brought to the Board for agreement, that the Board would agree the Interim OEP's response and that it would review the approach in early autumn in light of capacity at that point.

21.11 **Any other business**

There was no other business.

The meeting concluded at 15.26.