

Date

6 October 2021

Title

Report of the Interim CEO-designate

Report by

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[Paper for information](#)

[Open in part](#)

Summary

1. We are rapidly approaching our vesting and operational go-live dates. This means that all of our main programmes of work are in highly active phases. Our establishment programme has reached the point of implementation, our report monitoring the 25-year environment plan is in substantive drafting and peer review stage, we continue the challenging work of developing our strategy for consultation, and we are engaging meaningfully with stakeholders across each of these. All teams are stretched, and our new recruits are fully engaged in meaningful contributions from day 1.
2. The Environment Bill continues its course through Parliament. The focus of public debate has largely been on issues away from the OEP's constitutional arrangements. Votes on 26 October in the Lords have, however, reintroduced its prior amendments on arrangements for the Secretary of State's guidance power, and remedies available to the Courts under an Environmental Review. These will now be considered in the House of Commons. The continued uncertainty of the timing of the Bill passage creates challenges for our establishment and implementation programmes as the date of Royal Assent is an essential dependency for a range of decisions that follow.
3. The breadth and extent of delivery across our teams is commendable. Despite the challenging pace and breadth of work, morale is high and staff are working well together and in a flexible way. We are making meaningful progress across all of our key programmes, set out further below and the Board's other business.

Recommendation

4. The Board is recommended to note the issues outlined in this paper.
5. The Board is recommended to:

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- a. agree the amendments to its governance framework required on legal creation of the OEP, presented in red-line at Annex B
- b. agree to establish an Audit and Risk Assurance Committee (ARAC) under the terms of reference at Annex D of this framework and note that Dr Paul Leinster and Professor Dan Laffoley have agreed to serve as members of ARAC, at the request of the Chair, and that Dr Paul Leinster has agreed to serve as ARAC's Chair.
- c. agree to extend the Steering Group of our monitoring report of the 25-year environment plan to the end of February 2022, in line with our revised expectations for the timing of publication.

Interim Functions

Monitoring of the 25YEP

6. Government published its [report of progress delivering the 25 year environment plan](#) on 22 October. Our monitoring report will respond to this.
7. The Steering Group will meet on 2 November to consider government's report, and a draft executive summary and report. The Board will consider the executive summary and key messages of this important report separately on its agenda.
8. It remains our intent to publish our report shortly after our functions commence, at or around the end of January.

Complaints

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

9. We have [published our first complaint report](#) as the Interim OEP covering the period of 1 July to 30 September.
10. The number of general enquiries to the Interim OEP, which are also handled by the complaints team, continues to increase. We received 22 enquiries in September and 16 in the first fortnight of October. The complaint team is triaging and managing the current volume. This is an interim arrangement and longer-term consideration of how we resource and manage general enquiries, service complaints about the OEP and information requests will be needed.

11. We are also in very early discussions regarding the potential designation of the OEP under the Public Interest Disclosure Act 2013. This is the legislation that affords employment protections for whistle-blowers making qualifying protected disclosures.

Advice and monitoring environmental law

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12. Following the onboarding of new starters into the team, the decision tool previously agreed by the Board has been extensively applied. Many consultations pass through the tool with the key limiting factor being whether we have sufficient resources to engage. This has highlighted the importance of getting our overall prioritisation approach right, enabling us to identify, where we can make the most difference.

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Establishing the OEP

Programme Management

13. The Board is to consider separately preparations for the vesting, operational go-live and commencement of the OEP's functions. Our programme management of these activities now includes weekly delivery monitoring within OEP and with our Defra sponsorship team, and fortnightly review in the senior leadership team. We have developed a set of readiness criteria to test and assure readiness for each of the four decision points: to legally create the OEP, to operationally transition from Defra to independent functions, to undertake the staff and payroll transfer, and to lay the orders to commence the OEP's functions.
14. Good progress continues. As implementation approaches, challenges have emerged as decisions are made and assumptions are tested, including through new partner staff in post in Defra who do not have the same understanding of the history of the programme. We are using our governance structure to escalate as appropriate and working to ensure visibility of risks and issues under management.

Vesting

15. A range of risks have been identified relating to the legal creation of OEP, and in respect of which resolution has proved challenging. 'De-merging' a shadow body from an established department of government is unusual, and it has been challenging to identify appropriate decision makers in Defra to respond to and agree certain questions of principle. A plan is now in place, and we have taken responsibility for the design, drafting and (wherever possible) execution of steps needed. This has resulted in a net increase in external legal and other expenditure to ensure delivery plans remain on track. We have taken the approach of agreeing to take on as much of the "heavy lifting" as we can, in order to maintain our timeline and manage down future risks to the OEP.
16. Risks exist in this stage of our establishment, in particular, relating to the arrangements which connect the Board, including me as CEO, with the staff who will remain employed by

Defra, and Defra's administrative and financial management services on which we will rely until operational go live (up to seven weeks). A transitional governance and services agreement is proposed. Both these aspects are set out more fully separately on the Board's agenda.

Recruitment & Human Resources

17. Three staff have joined since the last Board meeting (set out in the table below) with other new starters due to arrive in November, December, and January. An updated organisational chart is appended at Annex A, which also identifies candidates appointed but not yet in post.

This section has been redacted as it includes personal data

18. Recruitment campaigns are open for a Senior Complaints Manager, Principal Analyst, Senior IT and Digital Officer in addition to a G6 Head of IT and Digital Services as a secondment opportunity. IT recruitment has proved challenging with no applicants for our senior IT officer role, following a first unsuccessful campaign in July. We are now progressing short-term contingent labour, while we evaluate approaches for a longer-term approach.
19. Since the last Board meeting staff engagement session and final interview panels have been held for three of the four executive roles. We are grateful to the support of Board members and staff who were able to contribute to these activities. Three provisional offers have been made and accepted and the pre-appointment processes commenced. Candidates for the Chief Insights Officer role have been shortlisted and the staff engagement event and panel for the Chief Insights Officer role will be held in early November.

Staff Transfer Scheme

20. Activities required to enable the staff transfer scheme are progressing, overseen by Defra HR. A scoping and matching process needed to give effect to transfer has been completed and formal letters to staff impacted have been issued. A short period of consultation is in train ahead of the next stages of the process, with transfer on track to take effect from 1 January.
21. The staff transfer contains two core cohorts. Firstly, those staff recruited into Defra expressly to transfer to OEP. Arrangements for this cohort are relatively straightforward. There is more complexity in the cohort of staff who historically worked for the Natural Capital Committee and who have formed the nucleus of our Insights and Analysis team. Individual discussions have completed, and there are different potential outcomes for staff, dependent on the specific circumstances and aspirations of those involved.

Learning and Development

22. Work is underway to prepare for the second OEP new starter welcome day, and a leadership day, both to be held in Worcester in November. The leadership day will be an opportunity for all Grade 7s and above to discuss the OEP culture, ways of working and leadership behaviours that our people should embody for the OEP to be successful, and to enable the principles underpinning our organisational design. This will be facilitated by an external provider sought through Civil Service Learning. The Board is to separately consider culture and values on its agenda, which will support preparation for the workshops at this event.

HR implementation

23. The first round of User Acceptance Testing (UAT) for the HR and Payroll system provided by MidlandHR has been conducted. Overall the testing has been a success, with only minor issues flagged up. Most of the issues were caused by known gaps which will be resolved by receiving staff data from Defra's systems later in the year, and the creation of the OEP bank account and employer codes from HMRC after vesting. There will be an opportunity for non-HR users to test the employee facing aspects of the system in November.
24. Work continues to draft and refine the remaining HR policies, guides, documents, and templates in time for staff to transfer to the OEP.

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25. In October we have progressed commercial arrangements for HR and Health and Safety contracts such as the Employee Assistance Programme, HR Casework, Employee Benefits and the Travel and Subsistence provision.

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Estates

26. The OEP's temporary space in Worcestershire County Hall is being used regularly by a small number of locally based staff. It is also being booked for dedicated team days, giving all staff the chance to work together to build relationships. It is expected that attendance will increase as our local workforce grows and becomes the majority of staff in the division.

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IT establishment

27. The contract for the end user computing has now been formally awarded to Boxxe to deliver a managed service provision for laptops, mobiles, iPads, and peripherals. Build workshops are now underway to deliver day 1 needs in December. These include devices, core application suite, the SharePoint site, and staff intranet. The delivery timeline is tight, but we expect all employees will have received and familiarised themselves with their tested OEP laptop by the week of 13 December. Arrangements for the Board will be confirmed shortly.
28. The Board was previously made aware of work needed to ensure our current online complaints portal met accessibility standards. The website supplier, Civic, are to create a new complainant facing portal to make it easier for public users, whilst keeping the same back-end functionality for OEP staff. A prototype is expected in November. It is not yet certain that the prototype will meet all aspects of the accessibility standard when audited. An alternative, more complex, approach to reconfigure the existing portal may need to be pursued.
29. The User Centred Design function within Defra Digital and Technology Services are conducting user research for the website and complaints portal more widely, to ensure user feedback is gathered and informs future development. This is a second key component to ensure the OEP's online service fully meets government digital service standards ongoing.

Northern Ireland

30. DAERA has begun its recruitment for the Northern Ireland (NI) Board member with the advert expected to open w/c 1 November and remaining live for 3 weeks. This advertisement has been listed on the NI Civil Service website, on the OEP website, in the three largest NI newspapers, and ENDS Report and promoted via stakeholders. A NI member is unlikely to be in post before January.

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31. RSPB-NI have organised a roundtable event for later in November, which will include key stakeholders, academics and DAERA to consider 'next steps for the OEP in NI' in which I will participate. Thereafter, once our remit is confirmed, we will start to lead our own NI stakeholder engagement directly. Foundations are being laid for in person stakeholder engagement in NI in January.
32. The interim member of staff leading on NI matters is now in post.

Environment Bill

33. The first two days of ping pong took place on 20 and 26 October in the Houses of Commons and Lords respectively. The session on 20 October saw the government amend the Bill back to its preferred state. In relation to the OEP provisions, this involving reinstating the power to issue enforcement guidance, and the constraints on the remedies that can be imposed in an environmental review.
34. On 26 October, the House of Lords voted not to accept these amendments and has referred its original amendments back to the House of Commons. At time of writing, the date of next consideration of Lords' amendments by the Commons has not been scheduled. As noted above, any extended delay to Royal Assent will have impact on our establishment implementation plan.

OEP Constitution and Governance

35. The Board agreed its governance framework as an interim Board on 1 July. This framework has been updated in anticipation of the OEP's legal creation at Annex B. The document, presented with changes highlighted, is substantially the same with key amendments being:
- a. Changes to reflect the creation of the OEP, and the end of Interim OEP
 - b. Changes to reflect that the Interim CEO will be the OEP's accounting officer rather than a delegated budget holder of Defra.
 - c. A deferral of the expiry of the 25-year Environment Plan Report Steering Group until 28 February
36. The OEP must establish an Audit and Risk Assurance Committee (ARAC) to support the Board in issues of risk, control, and governance. Proposed terms of reference for this Committee are presented at Annex D of the revised governance framework, based substantially on those incorporated within HM Treasury's Handbook for Audit and Risk Assurance Committees.

37. The Chair has nominated Dr Paul Leinster and Professor Dan Laffoley as members of this committee, and for Dr Paul Leinster to be its Chair. An independent member is to be appointed with relevant financial reporting and management expertise. We have approached the Chair of the small government department network of the government finance profession to identify potential candidates. It is anticipated that the first meetings of the Committee will be in the first quarter of next year.
38. Discussions on the framework agreement which will set out our relationship with Defra have progressed.

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It is intended that this be brought to the Board in December, with a view to agreement in time for the commencement of the OEP's functions in January.

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It will be essential that the OEP's unique constitutional role and its ability to act independently is properly reflected in this document. Balancing Minister's responsibilities to exercise appropriate oversight with the OEP's unusual role will require nuance and care in drafting.

Strategy

39. The team continue to work on the development of the OEP's strategy and a number of issues around the development of that strategy are dealt with in a separate paper. We are also engaging with a number of stakeholders on the strategy, ahead of our formal consultation, as noted below.
40. Ahead of the 6 October meeting I indicated I would share external counsels' draft final report of their research into past public law environmental litigation. In the event that report was delayed. It is now enclosed at Annex C. We are considering this report as we develop our thinking further on the OEP's strategy and enforcement policy.

This section has been redacted as it contains legally privileged advice

Corporate

Spending review and business planning

41. Defra's spending review settlement has been confirmed in the overall spending review announcement by the Chancellor in the budget. Defra's settlement from HM Treasury does not include a specific ring-fence of the OEP budget.

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Stakeholder relations

42. The agreed engagement plan to support development of the OEP strategy and our response to the progress report under the 25YEP has gathered momentum. This includes:

- a. **Existing forums:** we held our stakeholder forum on 21 October where we provided an update and set our plans for both go-live of the OEP, and our engagement until April. We emphasised the key stages of our transition to an organisation with functions and powers, to ensure understanding of the changes at vesting, operational go-live and commencement of functions. We also took opportunity to set out in detail our engagement plans, and to invite suggestions for addition or improvement. Stakeholders were universally supportive of the approach.

Regular forums with the core Defra group ALBs and our equivalent organisations in Scotland and Wales have taken place. We will hold a Scrutiny and Advice group special meeting on November 19 where we will seek feedback on the key messages and recommendations of the 25YEP monitoring report from a broad set of stakeholders.

- b. **CEO/Chair meetings:** Arrangements are in place with the CEOs and Chairs of key ALBs, some e-NGOs, Ministers, and the Permanent Secretary. Others continue to be scheduled from an agreed priority stakeholder list.
- c. **Semi-structured interviews:** We have developed a detailed set of questions on our strategy and enforcement policy that staff will use to seek views from senior practitioners we think can add valuable insight or where we think there is a need to engage with them outside other forums. The interviews will be sufficiently structured to enable conclusions to be drawn and comparisons made.
- d. **Special interest groups:**
 - i. **ALBs:** We will hold sessions with a core group of Defra ALBs on November 23 to test our thinking on our enforcement policy, as well as a meeting of November 24 to seek views on the overall strategy. This is alongside regular catch-ups with individuals ALBs to seek feedback on the 25YEP monitoring report, senior engagement through CEO, Chair and semi-structured interviews and a range of working-level contact.
 - ii. **e-NGOS:** We have agreed a schedule of three separate roundtables with a group of e-NGOs in November on enforcement (3 November), 25 YEP report (16 November) and overall strategy (22 November). These are being convened with support of Green Alliance and Wildlife & Countryside Link.
 - iii. **Legal:** We have agreed a schedule of three sessions with a group of practitioners convened by UKELA in November and early December (dates to be confirmed). These will focus on our enforcement policy, monitoring environmental law function and broader strategy.

- iv. Local government: I will be presenting at the ADEPT conference on 23 November, and the week after we will host a roundtable with members of ADEPT for more in-depth discussion on the 25YEP and our strategy. This will be an opportunity to engage with a broader range of perspectives beyond natural environment. We are also to meet with the Chair of the LGA's Environment, Economy, Housing and Transport Board and we will be joining the Board in early February during the formal consultation period.
 - v. Business and environment groups: We are holding a roundtable with members of Aldersgate group and Broadway Initiative on 22 November to discuss the 25 YEP report and the strategy.
 - vi. Other public authorities: Defra are supporting us to identify the appropriate structure to engage with other government departments, and across Defra's divisions. It is proposed that a discussion is held with the 25 YEP cross-government board, either within a Board meeting or separately with nominees from the attendees of this group. This is expected to occur in early December.
- e. We are also planning to hold at least one session at the beginning of next year with public authorities and other identified organisations that have not been as closely involved with the OEP to date. This is to pre-empt the formal consultation stage and encourage participation in that stage. We are using all our forums as a route to identify gaps in our current reach.

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Finance and Resource

43. The organisation's finance position is set out in the separate Finance Report.

Impact Assessments

Risk Assessment

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Equality Analysis

44. Equality related matters arise largely in relation to recruitment. We have strategies in place to make every effort to recruit and retain as diverse a range of staff as possible and that we remain an inclusive employer.

ANNEXES LIST

This section has been redacted as it is intended for future publication, contains legally privileged advice, or includes personal data.