



Agenda

Meeting of the Board
Wednesday 8 June 2022 – 2pm
MS Teams

Members

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

Attendees

Peter Ashford	General Counsel
Simon Brockington	Chief Insights Officer
Alexis Edward	Head of Finance and Corporate Services
REDACTED	Principal Business Officer (item 22.45)
Mike Fox	Head of Communications and Strategic Relations
Andy Gill	Head of Environment and Climate Analysis (item 22.44)
Joe Hayden	Head of Complaints, Investigation and Enforcement (item 22.47)
REDACTED	Principal Investigations Officer (item 22.47)
REDACTED	Principal Environmental Scientist (item 22.44)
Andy Lester	Head of Business Strategy and Planning
REDACTED	Principal Lawyer (item 22.47)
Kate Tandy	Head of Litigation and Casework (item 22.47)
Helen Venn	Chief Regulatory Officer
REDACTED	Business and Governance Officer (Secretariat)

22.42 **Apologies for absence and declarations of interest**

There were no apologies for absence.

Paul Leinster, Richard Macrory and Julie Hill declared an interest as former senior employees or board members of the Environment Agency in respect of item 22.47. The Chair has consulted with the General Counsel and the Head of Business Strategy and Planning and has concluded that at this early stage these Board members are able to participate in the discussion and decision. This will be kept under constant review as the investigation progresses and the Board's further decisions are sought.

22.44 **Targets Consultation**

The Board was reminded of the agreed framework for assessing government's proposals for the targets to be set under the Environment Act. This is to consider the targets' comprehensiveness, coherence, ambition and the confidence in their delivery, and to advise whether to 'drop, add, amend or commend' each in light of this analysis.

The Board considered the analysis and conclusions in Annex One. It echoed the concern voiced at the Board meeting on 27 April 2022 that the urgency of the timescale proposed is insufficient for the scale of the challenge in a number of areas, including biodiversity and species abundance, and marine. It highlighted the need to make clear in the covering letter that timely action is needed.

The Board considered the targets in turn, firstly the six targets on biodiversity. Its attention was drawn to the commentary and draft advice on the post-2030 species abundance target. Of particular concern is that the baseline for this target is in 2030 which cannot be known today and could allow for an overall net loss in 2042. This appears contrary to government's ambition (incoherent). *This section has been redacted as it contains legally privileged advice.*

The Board debated whether the proposed 10% increase on this baseline was sufficiently stretching. Officers did not recommend a change to the 10% increase in context of the large uncertainty in the improvements achievable by 2042. In addition the proposed OEP recommendation to bring forward the baseline date (to 2018 or 2022) will enhance the baseline level from which to recover from. The Board however argued that similar figures globally are 30 – 50% and questions on the level of ambition of government's proposals remain. This is to be considered further, by urging government to consider the level of increase after further research.

The Board discussed and agreed the proposals for other biodiversity targets, making some specific suggestions on drafting.

On the marine targets, the Board judged government's proposals inconsistent with the goals of the 25-year environment plan. It judged there to be a case for an additional target aimed at halting decline and promoting recovery. This could explicitly link to existing targets under the UK Marine Strategy.

The Board discussed the targets proposed for air quality. Its attention was drawn to the proposals for advice on the target on particulate matter. The Government target is to reduce the level of particulate matter to 10 µg/m³. The World Health Organisation has adjusted its assessment of a safe level to 5 µg/m³. The proposal is to agree with government's target level of 10 µg/m³ given the background level of particulate matter in the UK may mean a lower level would currently be unachievable. However, the OEP's proposed advice is to amend this target to bring forward the date for it to be achieved to 2030 from 2040, itself an ambitious proposition. Special measures would be required in the small number of areas where achieving the target by 2030 could be more challenging. The Board agreed on the 2030 deadline, the level (10 µg/m) and the need for special measures. It raised points on the wording, noting that the word 'safe' should be dropped because air particulate exposure is a dose-response relationship, with no absolute safe level. Similarly to species abundance, the Board agreed a more challenging target could be considered further beyond 2030, by urging government to consider the level of reduction after further research.

The Board considered and made specific comments on the advice proposed for targets for water quality. It noted these were not consistent with existing legislation and targets, for example those under the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. It advocated for the recommendations to be strengthened on the targets in respect of phosphorus reduction.

The Board considered the proposal to recommend that government drop the target on abandoned metal mines. It is not a nationally significant contributor to water quality. The Board appreciated the argument, but on balance decided against this approach. While the issue addressed by the metal mines target are localised, they are locally significant, and our proposed advice on air quality targets recognises the importance of localised issues being subject to national targets. To improve congruence, however, the Board proposed an accompanying recommendation for additional targets on major pressures to water quality.

The Board approved the analysis and conclusions at Annex One, subject to the amendments discussed.

The Board debated the key points that should be emphasised in our letter of advice. It judged these should include commentary on the overall level of ambition of the targets, commentary on where the OEP has recommended improvements to ensure that the targets are comprehensive, coherent and can contribute effectively to government's significant improvement test. It also desired an emphasis on urgency.

The Board **AGREED** to being asked for the approval of the advice and covering letter via electronic business.

22.45 **Corporate business plan and budget**

The paper was introduced. The business plan was presented for approval as the baseline plan for 2022-23, alongside the budget noting that these are subject to change in year. The business plan is a working document, the primary purpose of

which is to plan for and track delivery. It will not be published, whereas the corporate plan will be.

The Board considered the corporate plan. It was asked to note that the plan is (unusually) a one-year plan. The Board recognised the reasons for this, but queried at what point the OEP would feel confident to project forward for three years – the more usual span. This was expected in next year's plan. It was also noted that there are elements in the plan that are year on year activities, and that some work programmes will last beyond this one year.

The Board questioned whether it would be possible to project further ahead in time for the OEP's resource review, to potentially project forwards based on where the organisation wants to be in three years' time and work backwards from there. ACTION Head of Business Strategy and Planning to consider.

The Board endorsed the corporate plan. It commented on the imagery proposed and suggested more urban photographs, including photographs of people.

The business plan was discussed. The Board's attention was drawn to the extent of overprogramming proposed – namely 22%. This assumes that the OEP will recruit to its maximum capacity successfully in the coming months.

The Board sought clarification on the *this section has been redacted as its publication would be prejudicial to the effective conduct of public affairs* non-pay expenditure indicated to go towards our objective of organisational excellence and influence. This is an unusually high proportion, reflecting the establishment activity and expenditure necessary.

The Board questioned whether the OEP has the capacity for investigations. On current and predicted resourcing, the OEP will not undertake a high volume of investigations but will be able to conduct a small number of concurrent investigations. Each investigation will look different and more experience will allow greater clarity in assumptions in future.

The Board sought assurance on the staffing issues highlighted in the paper, *this section has been redacted as its publication would be prejudicial to the effective conduct of public affairs*. It was explained that the organisation is building resilience and recruiting as quickly as possible. In this team, some adjustments to the original organisational design are thought desirable, but progress is being made.

Our headcount is to be reviewed later this year along with our resources. The Board queried the timing of a review at this stage, given the OEP's limited experience of managing its functions (most especially investigations, other aspects of enforcement and the monitoring of environmental law). The Board recognised, however that a review this year may allow additional staff or resources to be available for the next financial year. The review will go ahead.

The Board sought clarification on how it would be kept abreast of changes to budget, business plans and delivery, and was advised that these mechanisms are being developed with a view to a quarterly report being provided. ACTION Head of Business Strategy and Planning and Head of Finance and Corporate Services.

The Board **AGREED** that the business plan at annex A to the paper is the baseline business plan for 2022/23 and that the budget set out at paragraph 25 is the baseline budget for 2022/23. The Board appreciated that there may be developments in year that would require it to review the business plan or the budget.

The Board **AGREED** that the corporate plan be published substantially in the form of Annex B to the paper, and delegated final approval of the corporate plan to the CEO in consultation with the Chair.

22.46 **Strategy, Enforcement Policy and Consultation Report sign off**

The consultation report was introduced and summarised. The broad consensus amongst respondents was supportive, but there was a need for clarification on the detail. More specifically there was feedback indicating a need to expand our explanation of our functions and approach in Northern Ireland.

The Board welcomed the consultation report. It queried the publication of the 23 membership body respondents and was advised that the relevant bodies have consented to publication.

The Board **AGREED** and endorsed the publication of the consultation and YouGov reports and **AGREED** to delegate approval of the final report for publication to the CEO in consultation with the Chair.

The Board considered the amendments proposed to the substance of the strategy and enforcement policy in light of consultation.

The Board sought assurance that the strategy would be periodically updated, and that the wording reflects this.

The Board suggested some changes to wording to be clearer. It also suggested that the wording should be more balanced when describing our approach to working with other public bodies, to more evenly recognise the different circumstances in which we could work together.

The Board considered the wording of the text on transboundary issues. The document specifically references the Northern Ireland and Republic of Ireland boundary, and the Board discussed whether it should be framed in a more generic way. The Board was assured that the boundary issues were raised extensively in response to our consultation.

The Board was assured that there are no inconsistencies in the text between the enforcement policy's investigation provisions and the OEP's approach to its first proposed investigation.

The Board **AGREED** the publication of the strategy and enforcement policy, subject to the suggested changes and **AGREED** that any such drafting amends may be agreed by the Chief Executive Officer in consultation with the Chair.

22.47 Investigation decision

The paper presented included substantial and detailed annexes setting out the approach and evidence collated. The Board were assured on the thoroughness with which the assessment had been undertaken, and that external counsel's opinion had been sought where appropriate.

The Board noted that a letter had been sent to Ofwat on 17 May 2022 stating that the Executive were minded to recommend to the Board that we investigate the issues. The Board was reminded that this followed the judicial review proceedings against Ofwat launched by Wild Justice.

Equivalent letters had not been issued to the Environment Agency or the Secretary of State for the Environment. The Board were advised that there is a detailed communications plan to begin once the OEP enforcement policy is published on 23 June 2022. Within this, the public authorities will be notified of the commencement of the investigation.

The Board sought assurance on how seriousness had been assessed. The test is in the assessment template and is applied for each public authority. The Board recommended it be brought out clearly in all Board decisions on investigation and enforcement why the OEP believes the matter to be serious.

The Board considered and supported the proposed objective of the investigation; to determine whether Ofwat, the SoS and/or the EA have failed to comply with their respective duties in relation to monitoring and enforcement of water companies' own duties to manage sewage, and through doing so clarify the respective duties, and improve regulation of water companies, ultimately leading to a reduction in sewage pollution.

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

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

The Board **AGREED** that the OEP should commence an investigation into suspected failures to comply with environmental law by Ofwat, the Secretary of State and the Environment agency.

There was no other business.

The meeting concluded at 17:31