



Office for Environmental Protection

Minutes

Meeting of the Board

Tuesday 16 April 2024 at 9:00 am via Microsoft 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	Chief Executive
Dame Glenys Stacey	Chair

OEP Attendees

Peter Ashford	General Counsel
REDACTED	Principal Analyst (item 24.29)
Dr Donnacha Doody	Head of Northern Ireland Analysis (item 24.29)
REDACTED	Senior Northern Ireland Analyst (item 24.29)
Mike Fox	Head of Communications and Strategic Relations
Helena Gauterin	Head of Environmental Law (item 24.34)
REDACTED	Principal Monitoring Environmental Law and Advice Officer (item 24.34)
Joe Hayden	Head of Complaints and Investigations (item 24.32)
Angel Lai	Head of Finance and Corporate Services
Andy Lester	Head of Business Strategy and Planning
Professor Robbie McDonald	Chief Insights Officer
Craig McGuicken	Northern Ireland Lead
REDACTED	Legal Researcher (Acting Board Secretary)
Kate Tandy	Head of Litigation and Casework (items 24.32 and 24.33)
Helen Venn	Chief Regulatory Officer

24.26

Apologies for absence and Declaration of Interest

The Board received apologies from Natalie Prosser. There were no new declarations of interest.

The Board congratulated Julia Hill on her reappointment as a Non-Executive Board Member for an additional four year term.

24.27 Minutes and matters arising

The Board noted the matters arising.

The Board AGREED the minutes of the previous Board meeting on 28 February (part 1) and 29 February (part 2).

24.28 Report of the Chief Executive

The report was presented, highlighting progress in delivering our strategic objectives.

The Board's comments were sought on the strategy and objectives for a nature friendly farming project to support our progress report in England for 2023/24. The Board queried whether this might overlap with work Defra is completing and sought assurance on how this would be managed. The teams are closely engaged to understand what information Defra has, which can be made available. It is likely that independent analyses will be required, hence the proposal. The Board emphasised that the project scope should not overlook cross cutting links like to the conservation of marine and estuarine environments.

The Board noted that a number of contractor reports had been received and were being evaluated. It sought assurance that the reports will be published in due course and the protocols in place to decide how and when this would happen. The Board would welcome sight of the reports in addition. ACTION Chief Insights Officer to consider approach to disseminating to the Board and publication.

The Board noted the updated timeline to publish our reports into the implementation of aspects of the Water Framework Directive Regulations in England and in Northern Ireland. It noted that challenges in meeting headline objectives set under the Water Framework Directive are faced by other nations.

This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs. ACTION General Counsel to provide a note to address the Board's queries.

The Board considered and noted progress in respect of the OEP's investigation into the regulation of combined sewer overflows. *This section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement*, but acknowledging the welcome increase in light of a challenging overall position for the public finances and Defra group. The corporate plan is another vehicle to reflect this in public. ACTION Chief of Staff to draft letter.

The Board discussed the potential outcome of funding sought from DAERA and the subsequent actions required to manage the budget and delivery effectively. The Board also emphasised the importance of tracking efficiency improvements, to enable us to evidence improvement over time.

The Board considered and AGREED the financial commitments of the two-year extension of our contract with our key IT supplier (Boxxe), to vary the contract by an additional £556,000 and to delegate authority to the Chief Executive to vary the contract by up to a further £80,000 to allow for foreseeable variable costs in the contract sum.

The Board reviewed the people survey results and commended the positive response and engagement figures reported.

24.29 The Northern Ireland drivers and pressures report

The Board was updated on progress in analysing evidence of the drivers of biodiversity decline in Northern Ireland and production of an associated report. Guidance was sought from the Board regarding the report's structure, content, and the articulation of key messages.

The Board deliberated on the unsustainable practices of land use and development in Northern Ireland, identifying this as a critical and potentially impactful message of the report. The Board noted the future implications of these practices and, for example, the biodiversity outcomes should current trends persist.

The Board considered the identified ecological pressures, such as those resulting from migration, necessitating cross-border and international collaborative efforts, along with the need for appropriate metrics to gauge such pressures. The Board acknowledged that many of the issues in the report are deep rooted and challenging to address, making it probable that any solutions will be gradual and long-term.

The scope of the report is intended to set out the pressures faced by biodiversity and drivers of biodiversity decline, as a foundation of evidence on which future action could be determined. The Board noted this scope does not allow the OEP to present solutions for remedying these pressures and drivers. It considered the benefits of seeking to do so. Whilst it recognised the potential advantages of this approach, it cautioned against such expansion, given the evidence base assembled. It also advised against drawing conclusions on the governance and policy framework in Northern Ireland, unless this was clearly identified from the evidence.

The Board considered the merits of publication before or after summer recess, and found arguments in favour of each. Further consideration should be given to the timing in light of the Board's discussion. ACTION Head of Communications and Strategic Relations

24.30 EIP progress report for England 2023/2024

The Board was presented with an update on the EIP monitoring and assessment process and the proposed scope of the England EIP 2023/4 progress report.

The Board emphasised the importance of addressing the strengths and weaknesses of government's 2023/24 Annual Progress Report, and distinguishing and explaining our position if analyses differ. This is more difficult given the timing provided in the Act for government's response.

The Board welcomed the intention to include spatial and regional perspectives, as an expansion of our analyses this year. It also welcomed the intended greater clarity for year on year changes, potentially as a standalone section. This reflected comments raised in select committee appearances in March.

The Board considered the intended expanded approach to stakeholder engagement. A consistent and fair approach to all stakeholder groups is required to ensure we are transparent and equitable in our approach. In particular, we must ensure appropriate balance between the public bodies being scrutinised and others, such as NGOs, who scrutinise.

24.31 Strategy review: what success looks like?

The Board considered proposals to give greater clarity of what success looks like for the OEP, in our forthcoming strategy review, following earlier discussions of the Board in this regard.

The Board AGREED that our mission and strategic objectives should endure, as was expected when they were decided. It considered the approach to set more specific outcomes under each of our strategic objectives proposed, and the detail of those outcomes.

The Board considered that the draft outcomes could more clearly include our role to improve government's and others' decision-making through better information. The Board recognised the importance of real environmental outcomes as a measure of OEP success, whilst acknowledging that the OEP's causal role in delivering those outcomes may be hard to distinguish.

The Board considered that some proposed outcomes could be better expressed. It judged success to include reports of high standard that withstand the test of time, for example.

In considering the proposed outcomes related to the improved implementation of law by public authorities, the Board considered the impact of public finance constraints on environmental governance. It judged the OEP should expect improvement in implementation to result from our scrutiny.

In relation to our objective to improve compliance with environmental law, the Board emphasised the impact the OEP has in improving the general administration of environmental law by public bodies through our oversight and action. The need for a wide range of stakeholders to have confidence in our approach was also noted.

The Board recommended further consideration of the precise language to ensure the draft outcomes have meaning to both internal and external audiences.

24.32 Review of our approach to casework, investigation and enforcement

The Board was requested to consider a number of options and recommendations to update the enforcement policy and improve delivery of our complaints function and overall mission in light of steers provided by the Board in October 2023.

The Board considered the opportunity costs associated with handling the extensive enquiries received, to challenge the merit of continuing our current approach, as against expanding our capacity for enforcement activity. The Board recognised the value of enquiries, and the service this provides to the public, and that the allocation of resource is not straightforward to define, given the flexible resourcing model adopted across the OEP.

The Board discussed the number of investigations commenced, and the timing of initiating investigations within our current practice. Rather than providing more extended opportunities for public authorities to resolve potential issues through preliminary correspondence, the Board judged that investigations under the Act could be commenced sooner, favouring the statutory investigation process and therefore a more structured approach. Our communications may need to clearly explain that the purpose of an investigation is to establish whether there has been non-compliance, and is not a pre-determination that there has been.

The Board considered the experience of the EU Commission, and the importance of self-initiated investigations to the EU Commission's approach. It considered how to develop the mechanism for self-initiated investigations, as a result. It queried whether a potential target ratio for self-initiated work could encourage proactive identification of specific issues. The Board's attention was drawn to the intended expanded approach to monitoring the implementation of environmental law, as one means to identify potential issues of non-compliance. The Board judged generally that we are well placed to identify potential failures to comply with environmental law.

The Board queried why our investigation activity had focussed on central government and its agencies to date. There was felt to be potential for non-compliance with environmental law to also be occurring within local authorities. The paper set out analysis in this regard, which the Board noted. In general, the Board endorsed the Executive's view that our seriousness and prioritisation approach is appropriate, and should not be adjusted. They allow for local authorities to be investigated if merited.

The Board raised stakeholder perceptions of the speed of the progress of our investigations, and the transparency of progress to complainants and others. There was judged to be a risk that we are not seen as sufficiently sure-footed and determined, rather could be judged to focus on detail early. There are lessons we can learn from some of our cases, and these are acknowledged. Our enforcement process can be more responsive than judicial review in some circumstances.

The Board AGREED the intended direction for the enforcement policy review highlighted in the paper, subject to its comments.

24.33 Judicial review interventions policy

The Board welcomed the paper and proposed policy. It expressed caution regarding the proposal to have distinct internal and external guidance – preferring one guidance, with additional, internal-only, operational procedures to support as appropriate.

The Board noted the desirability of amending its delegations to allow for efficient handling of potential interventions by the legal team, and the proposal that the Board makes relevant changes to its non-financial scheme of delegation when next updated.

The Board noted the importance of consistent and transparent internal reporting of cases considered for intervention, perhaps within the Chief Executive's report.

The Board AGREED the interventions policy and guidance.

24.34 Our approach to monitoring the implementation of environmental law

The Board considered our current approach to monitoring the implementation of environmental law, and proposals for how this could be further developed. It noted our current practice of 'deep dives' to inform the production of environmental law reports we've decided to produce through business planning, with capacity to respond to events that arise.

The Board noted the intent of improving how we work in the issues-based way by undertaking monitoring not linked to a pre-determined response, such as producing a report. Notably, this 'baseline' monitoring can provide evidence of potential implementation issues and non-compliances with environmental law that we can consider across our functions, aligned with our issues-based approach. It is proposed to initially pilot this monitoring, seeking to learn and refine before rolling out a longer-term approach.

The Board questioned the scale and scope of the proposed approach. The Board discussed the information sources and activities suggested. It noted that some of the sources set out may only yield anecdotal evidence and that capacity may be better directed to smaller reviews on a systematic basis in different areas, to provide better quality evidence.

The Board welcomed the approach to pilot the proposal, so that the quality of information and resources needed to achieve what we intend can be judged. A pilot of six months was agreed, with a mid-review at three months to provide a learning opportunity.

The Board AGREED to a six month pilot, but recommended refinement of the sources considered as piloting identifies which are likely to be the best sources of valuable intelligence.

24.35 AOB

There was no other business.