



Minutes

Meeting of the Board

Part 1: Wednesday 28 February 2024 2.00pm, The Deep Business Centre, Hull

Part 2: Thursday 29 February 2024 8.45am, Oaklands Hotel, Grimsby

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

Tim Adey	Head of Science and Evidence (item 24.18)
Peter Ashford	General Counsel
JREDACTED	Senior Investigations Officer (item 24.20)
REDACTED	Principal Lawyer (item 24.21)
REDACTED	Senior Investigations Officer (item 24.21)
REDACTED	Acting Board Secretary, and Environmental Analyst
Neil Emmott	Head of Monitoring Environmental Law (item 24.23)
Andy Gill	Head of Insights Operations (item 24.23)
Suzanne Halls	Acting Head of Communications and Strategic Relations
Joe Hayden	Head of Complaints, Investigations and Enforcement (items 24.20, 24.21)
REDACTED	Principal Complaints and Investigations Officer (item 24.25)
REDACTED	Principal Lawyer (item 24.20, item 24.22)
Angel Lai	Head of Finance and Corporate Services

Andy Lester	Head of Business Strategy and Planning
Dr Cathy Maguire	Head of Assessments (item 24.11, item 24.18)
REDACTED	Principal MELA Officer (item 24.23)
Professor Robbie McDonald	Chief Insights Officer
Craig McGuicken	Northern Ireland Lead
REDACTED	Principal HR Officer (item 24.15)
REDACTED	Principal Lawyer (item 24.23)
Ellie Strike	Head of Monitoring Environmental Governance (item 24.22)
Kate Tandy	Head of Litigation and Casework (items 24.20, 24.21, 24.23, 24.25)
Helen Venn	Chief Regulatory Officer

Part 1

24.09 Apologies for absence and declarations of interest

There were no apologies of absence and no new declarations of interest.

24.10 Introduction to strategy discussions

The Board was reminded of the agreed approach to our strategic review. In October 2023, the Board had considered what its priorities were for this review, and in January 2024 had noted the specific work being undertaken in each priority area. The purpose of the subsequent discussions of the Board was to seek the Board's steer on some of those areas.

24.11 A prospective approach to monitoring changes in the natural environment

The Board was asked to consider the importance of prospective analyses as part of Environmental Improvement Plan (EIP) progress reports, in the context of our maturity in doing so, and as this is a discretionary part of this function.

The Board considered how important this aspect of our work is to our overall impact, and considered also the potential impact of this area of our work. The Board agreed to take a prospective approach, noting it as core to our role and one of our most valuable functions for stakeholders. Its importance and effectiveness for identifying, communicating, and making explicit where targets are off track and how progress can be rectified, was noted.

The Board considered approaches to develop how we conduct our analyses, by drawing on wider evidence sources over time. There are a range of ways we expect the evidence to

improve. We could seek to develop quantitative assessments to determine the chances of meeting targets e.g. an 80% chance of meeting a target. This kind of approach is developed in the energy and climate sectors but not yet in all other environmental fields, such as biodiversity.

The importance of communicating the findings of prospective analysis was noted, with consideration for how subtleties and sophisticated diagrams could be used to make sense of complex information. There was a discussion around terminology, noting that we do not aim to 'predict' outcomes but to quantify prospects by identifying to what extent targets may be met or missed. It was noted that we could be explicit about caveats to our analysis, such as shocks and discontinuity that might risk prospects. It was noted that we will always continue to be transparent about the extent to which we are relying on expert judgement but that over time we are seeking to draw on wider evidence.

The Board queried the timescales within which the full potential of prospective analysis could be realised, considering scarce resources. We would anticipate investing money in methodological improvements which could be implemented in the next two years, especially to assess the thriving plants and wildlife goal in England. Funding would also be required to do this in Northern Ireland.

It was noted that some stakeholders may question our emphasis on this aspect of the progress reporting function, given it is discretionary. The Board therefore considered how prospective analysis should be considered during the development of the new Strategy and consultation on it. The Board judged we should consult on *how best to implement* prospective analysis in our upcoming strategy consultation. It was noted we could link to the work that others do, including the Climate Change Committee, to illustrate how prospective analysis can be implemented.

24.12 Taking stock: our communications and engagement

The Board was asked to consider the four questions outlined in the paper regarding our approach to communications and stakeholder engagement.

Regarding us having the influence and impact we intend, the Board identified opportunities for improvement: further engagement with parliamentarians, other government departments beyond Defra and DAERA, and some further stakeholders in the environment sector. There may be different ways to reach new and broader audiences such as through greater use of infographics and opinion pieces for example.

Taking the example of the England EIP progress report, the Board queried the extent to which we have planned to follow through with engagement about the recommendations made in the report, to maintain a drum beat of communications activity and stakeholder engagement, with consideration given to how we seek feedback on our effectiveness in this from our key stakeholders.

The Board considered the benefits of raising our public profile. It noted that the public is important in securing long-term environmental change. However, the Board did not judge a high public profile to be material to the OEP, nor identify specific purposes where this would be justified as an outcome to aspire to. Our complaints and enquiries function has an important role

in providing a route for the public to contact us, and was considered the most suited to developing a public profile for.

The Board considered the OEP's convening power. It questioned whether we are already doing enough and whether this was a core part of our role. It was recognised there is potentially a role to coordinate between public authorities to seek resolution to issues. Convening to ensure we properly understand the complexities of the environment was recognised as important, and the College of Experts was acknowledged as an opportunity for this. In considering further engagement activities, the Board noted it remains important not to step beyond our legitimate role and particularly, not to step into policy making. All our engagement must properly respect our role.

24.13 Measuring our success

The Board considered proposals to develop a balanced scorecard of the OEP's performance, including our success, as a further development of our overall approach.

The Board welcomed the paper and judged that we haven't yet provided sufficient description and evidence of our impact in our annual report and otherwise, and there is an opportunity to showcase the quality and depth of our work by presenting these results in the annual report.

The Board discussed the purpose of the scorecard, questioning whether it will be descriptive only, or to what extent we will be defining targets beforehand.

The Board noted the scorecard as an effective tool for articulating the link between our resources and our delivery. The scorecard could also be effective for understanding and communicating strategic risk and organisational excellence. For example, it could be an effective tool for post-project appraisals and understanding the effectiveness of our corporate functions including finance, governance, diversity, inclusion, recruitment, and retention.

The Board raised that not all of the potential performance indicators are equal. Consideration should be given to how to communicate this nuance to a broader audience and consider another name for the 'scorecard' to reflect this. It was noted that the scorecard could focus more on outcomes (and not just outputs which are currently overrepresented). The Board also queried what stakeholders' expectations are of what we could or should be reporting against.

The Board reflected that the scorecard may be improved by a more precise understanding of how we judge our own success, so as to be clearer on how this can be measured. A further Board discussion may be warranted. ACTION Head of Business Strategy and Planning.

The Board articulated strong support for developing iterations of the scorecard over time, the natural cycle for this being the Strategy reviews. The Board also felt it important to report separately on our impact in England and Northern Ireland.

The Board AGREED that we should develop a balanced scorecard approach to reporting our performance, with the core components outlined in the paper, subject to further development, in light of its discussion.

The Board AGREED that it should consider the balanced scorecard quarterly, and a qualitative report on performance and impact half yearly.

The Board AGREED that we should publish:

- a. the balanced scorecard in our annual report and accounts, alongside case studies and wider narrative as appropriate;
- b. an interim performance update, including the balanced scorecard, alongside our annual report and accounts;
- c. a version of each evaluation study we commission.

24.14 Business planning update and 2024-2025 proposed budget

The Board considered and commented on the prioritisation choices set out in the paper, and its annexes. The Board considered how we make best use of our resources in Northern Ireland, in light of the proposals made.

The Board noted the extent of analysis and challenge the proposals had been subject to. It was noted that this is an election year. Because of this, the Board suggested we could consider reserving additional capacity for agile work to react to the political context around us.

The Board considered the proportion of resources towards our objective for organisational excellence. The Board asked if there were areas we could make savings through economies of scale by sharing services. It was noted that the overall approach to delivering corporate services would be considered as part of our work to ensure efficiency, though changes might not be implemented in year. A number of significant savings had been made through scrutiny of contractual arrangements.

The Board noted the uncertainty in the funding to be received. It asked officers to consider how we would allocate more resources, so we could be ready to scale up, if we received them. The Board acknowledged and reminded us that our intended approach is to ensure we have capacity to do our work well, rather than spread our resources too thinly.

The Board discussed and encouraged transparency about the things we do not do. It encouraged our focus not to be too weighted to the short-term, against longer term outcomes and workstreams. It was noted that there was opportunity to make a difference in the area of environmental governance and that convening might sometimes be a cost-effective way to gather evidence on thematic areas.

The Board noted the challenges in ensuring we deliver within our budget settlement in Northern Ireland, if it is not to the level we have sought.

24.15 Senior staff performance management and bonus policies

The senior staff performance management and bonus policy paper was set out. The Board noted the conflict of interest in senior staff making recommendations to the Board on senior staff performance management and bonus policies, and the additional steps taken to mitigate these risks, including the additional scrutiny and oversight of the Chair.

The Board considered the arguments presented and the role it would play in oversight of the scheme. It noted that those awarded any bonus will be noted publicly through our annual report and accounts. It also noted that there are benefits for staff recruitment and retention in aligning with schemes across the Civil Service. It noted the consultation that had taken place with the recognised union.

The Board AGREED to align its Senior Staff Performance Management policy with the Senior Civil Service Framework.

The Board AGREED that:

- a. the Chief Executive should be responsible for managing the performance of Executive Directors;
- b. the Chair should be responsible for managing the performance of the Chief Executive;
- c. in order to properly implement the framework: the Chair and one other Board member should be responsible for reviewing and assuring the performance of Executive Directors and the Chief Executive, including recommendations from the Chief Executive and Chair, respectively, on performance objectives, performance markings and bonus nominations;
- d. the non-executive members of the whole OEP Board should then be responsible for moderating and ratifying all senior staff objectives, performance ratings and bonuses;
- e. HR should support those making senior staff bonus nominations and decisions in a similar way to how they support implementation of the OEP bonus policy for staff up to and including G6;
- f. implementation should be in time for the end of the 2023/24 performance year.

Part 2

24.16 Minutes and matters arising

The Board AGREED the minutes of the 16 January board meeting.

24.17 Update from the Chair of ARAC (verbal)

The Chair of ARAC updated the Board on its recent meeting. It was noted that the Committee had commended the OEP on the significant improvements in financial reporting and risk management that were evident.

24.18 Report of the Chief Executive

The Chief Executive presented the paper. The Board noted the progress in the delivery of our strategic objectives.

The Board had a wide-ranging discussion on the points raised. The Board raised concerns regarding the marine environment noting that there is a perception of more substantive progress than there really is due to a disconnect between policy announced and policy implemented. The Board discussed how the OEP could potentially report on, the deficit between policy interventions needed to achieve long-term targets and those implemented.

The Board considered the project on inspection regimes. It was noted that it may be beneficial for our work in this area to be more widely known. There may be opportunity to blog about our work here, for example.

The Board considered progress in securing confirmation of our resources for the 2024/25 business year, from Defra and DAERA. It noted the challenges and continuing uncertainty. It considered steps we may wish to take to communicate what we are not able to do, linking this to environmental outcomes, if sufficient funding is not made available.

The Board noted that we aim to engage with suppliers to undertake market soundings as part of work to develop an additional approach for procurement of evidence and that the annual staff survey was soon to be circulated.

24.19 Taking stock: political changes in Northern Ireland

The Board discussed and considered the implications for the OEP on the restoration of the NI Assembly and the forming of a new Executive. The Board noted the opportunity for working positively with the Executive as a welcome development, and the importance of understanding the focus and priorities of the Executive relative to the environmental issues.

The Board discussed issues of environmental governance in Northern Ireland in this context, including the status of North – South and East – West institutions. The Board asked if we planned to complete a specific piece of governance work in Northern Ireland, including within the NI EIP progress report. This was not prioritised at present.

The Board discussed the plans for engaging with the restored structures, noting the introductory email that had been sent to all MLAs, and the upcoming meetings with the new DAERA Minister and the AERA Committee.

24.20 Investigation into ammonia advice: update

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

The Board were reminded that DAERA's decision in December was intended as an interim approach until a Minister was in place. It is understood that DAERA now aims to bring forward a longer-term approach in the Spring.

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

24.21 Special Protection Area Reviews

The content of the paper was summarised, including the proposal to launch investigations in England into Defra and Natural England and in Northern Ireland into DAERA, on the matters outlined.

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

The Board considered the comparable activity of Environmental Standards Scotland (ESS). The benefits of working alongside ESS and the interim assessor in Wales on a UK wide issue were noted, alongside the challenges and limitations of a joined-up approach given the different public authorities in each jurisdiction and the different powers available. We will engage with the other bodies through the process to understand how our outcomes, timeframes, approach and communications can align.

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

The Board AGREED:

- i. *This section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement.*
- a. to authorise investigations under s.33(2) Environment Act 2021 into Defra and Natural England in relation to their suspected failures to comply with the Conservation of Habitats and Species Regulations 2017 (the "Habitats Regulations") set out in paragraph 13 of the paper;
- ii. to authorise an investigation under para 7(2), Sch 3 Environment Act 2021 into DAERA in relation to its suspected failures to comply with the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (the "NI Habitats Regulations") set out in paragraph 13 of the paper;
- iii. *This section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement.*

24.22 NI EIP: update and proposed revised approach

The paper was presented, and assurance was given of the constructive and regular engagement we are having with DAERA as it develops its plans for the publication of a Northern Ireland Environmental Improvement Plan (EIP) with newly appointed Ministers.

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

The Board discussed the quality of the current draft EIP for Northern Ireland. It was noted that it is a strategy, not a delivery plan, and that we continue to emphasise the importance of delivery planning in our engagement with officials and the Minister.

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

24.23 Belisama project: update and request for approval

The Board was presented with the proposed final report on the implementation of aspects of the Water Framework Directive Regulations in England. It noted that a further report on the implementation of aspects of the equivalent regulations in Northern Ireland is to be provided for the Board's consideration in due course.

The Board was reminded of the agreed strategic intent. It commended the thorough and comprehensive nature of the report presented and acknowledged that the report highlights examples of where the law has not been implemented as intended.

The Board had a wide-ranging discussion about the wording, technical details and communications handling of the recommendations made in the report, including the alignment of the Water Framework Directive with other laws and regulations.

The Board noted some improvements to the presentation of data, for example the need for percentages to be put in context by including absolute numbers. ACTION Chief Insights Officer to consider an OEP protocol on this and related issues.

The Board advised on parts of the report that could be reduced, where key messages could be placed and how key technical information could be communicated more clearly, for example, in an infographic.

The Board considered the draft recommendations in detail. A discussion was had about whether to include our view in respect of the approach underlying the 'one out, all out' principle as a specific recommendation or within our conclusions. The Board agreed this should be included within recommendation 10.

The Board noted the proposals for publication of the report, and the preparatory steps being undertaken with Defra and the Environment Agency to ensure there are no surprises on the content.

The Board AGREED to:

- a. approve the report in substantially the form at Annex A to the paper (with only minor, non-material amendments to be made in light of the Board's discussion);

- b. delegate to the Chief Executive, in consultation with the Chair, approving that the final report has satisfactorily incorporated any such further non-material amendments.

24.24 Any other business

There was no other business.

24.25 Investigation into the regulation of Combined Sewer Overflows

Julie Hill and Paul Leinster were recused from this item owing to actual or perceived conflicts of interest.

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

The meeting concluded at 12.05