

Date

6 October 2021

Title

Report of the Interim CEO-designate

Report by

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Paper for information

Open in part

Issue

1. Preparations for the launch of the OEP are and will remain a priority, as we near passage of the Environment Bill. Unless the Bill is delayed, the OEP will be legally created in around four weeks' time, and its functions will commence around two months later. Preparations for the operational transfer of staff, and the establishment of payroll, IT, finance and other systems are in full train and causing pressures on resources. We need to prioritise and focus with care to ensure the OEP can go live operationally.
2. Development of our strategy and functions, and our development of our report on the environmental improvement plan continue. Plans are broadly on track in each to deliver to what remain exacting timescales.
3. Staff are highly committed, working hard but under pressure. Our new recruits to permanent OEP roles have started to arrive, but interim team members have left or are leaving. Resources are constrained to do all that we would wish, though the calibre, enthusiasm and capability of our new recruits augers well in the medium term.

Recommendation

4. The Board is recommended to note the issues outlined in this paper including the proposal that from the next scheduled formal Board meeting that a full finance report be presented by the Head of Finance & Corporate Services.

Corporate

Finance

This section has been redacted as its publication would prejudice the effective conduct of public affairs

5. Up to now, summary financial information has been set out in this paper. This has been a consequence of the fact that the interim OEP did not have its own qualified accountant. We now have in place our permanent Head of Finance & Corporate Services. I therefore propose that from the next scheduled ordinary Board meeting that a formal finance report be prepared and brought to the Board.

Spending Review

6. The Spending Review outcome will be formally announced by HMT on 27 October 2021. The OEP receives its funding from Defra's allocation from the spending review, and it is understood its budget will be ringfenced within this allocation.

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7. We will monitor progress with securing this funding as the Spending Review and business planning work that will follow this concludes. Government has committed to a 5-year indicative budget, ring-fenced for the period of the spending review (3 years). The business planning stage to follow will cover the next three-year period.

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Interim OEP resourcing and capacity

8. Thirteen staff have joined since the last Board meeting, of which two are interim appointments and eleven will form part of the staff transferred to OEP under the Staff Transfer Scheme. The majority of these arrived from early September. Two existing members of interim staff have been confirmed in permanent OEP roles.

This section has been redacted as it includes personal data

9. Three of our interim staff have left since the last Board meeting.

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10. We are continuing to work to meet staffing resource demands in as pragmatic and dynamic a way as possible, using short-term appointments to secure talented and effective staff to support temporary and transition work of the OEP Establishment team.
11. Our legal capacity has increased as our first additional lawyer has now started in post. We have also identified relevant contract framework agreements that are available to the OEP to support efficient sourcing of external legal services. We have developed an approach to

using these frameworks which we will keep under review in the first 9-12 months following vesting, as we develop a greater understanding of the OEP's likely legal needs. We are also engaging with leading law firms and barristers' chambers in relevant areas of law to develop relationships and establish scope for the OEP to develop more flexible arrangements (for example, secondments) to supplement our in-house legal team.

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

Stakeholder relations

12. Dame Glenys and I have met with 10 stakeholders since the Board last met. This included meetings with Minister Pow and the Secretary of State.

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New stakeholder engagements have included the National Physical Laboratory and Ofwat.

13. In September, we presented at the cross-governmental board for the 25-year environment plan about the OEP and our role.

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Dame Glenys has also spoken at panel events for the Broadway Initiative, Aldersgate Group, UKELA Northern Ireland, and an NAO seminar on regulation.

14. Our staff continue to engage broadly with a range of stakeholders, both to introduce and explain the OEP and our emerging approach and to consider matters of detail about our work. This month we have presented to Ofwat's staff, and the Defra Environmental Quality board, amongst others. We also held a meeting of the Stakeholder Forum, followed by a more detailed discussions with the Complaints and Enforcement subgroup. Annex C provides further information about attendees of the group.

15. The Board is separately considering a paper on our approach to stakeholder engagement in the autumn.

Communications

16. We continue to make arrangements for the establishment of the OEP's communications functions. In October we expect to establish an OEP presence on LinkedIn, as the first stage in building our digital channels. A Twitter presence is planned to follow in December. Content will initially be limited, and built around key messages and updates to our website.
17. Procedures for our independent press function are similarly in development. This will go live on 1 December alongside our operational functions when support currently provided by the Defra press office ends. We have received and responded to a small number of press enquiries during the summer from the specialist and sector press.

Establishing the OEP

Programme Management

18. We continue to manage the activities of the Interim OEP through three principal programmes: establishment, strategy and functions, and monitoring of the 25-YEP. Programme delivery is reviewed monthly by the senior leadership team.
19. The establishment programme will be at its most complex at the point of implementation, given the interdependency of transitioning IT systems, people and finance systems, and the link to passage of the Environment Bill. A number of the necessary steps to achieve launch fall to Defra, ministers and parliament, including the laying of commencement orders and other statutory instruments to enact the staff transfer scheme that will move our staff's employment from Defra to the OEP.
20. A particular focus has been to establish a common plan and sequencing between Defra and the OEP. This is in place. Detailed readiness tracking for 'go live' of the OEP's functions is being developed, and is reviewed weekly in the establishment programme working group and monthly by SLT. Further detail is being added as readiness is tested in weekly debate.
21. Two factors cause particular risk for the planned go live implementation date of 1 December. Firstly, the staff transfer scheme cannot complete until 21 days after Royal Assent of the Environment Bill as this is the required timeline for laying of the necessary statutory instruments in parliament. Secondly, the HR & payroll system transfer can only complete on the first day of any month. There is risk that the Bill's passage will not complete in good time for a full operational go live on 1 December.
22. There are other risks to note in the implementation plan, including some delays to initiation of end user computing products following a necessary second tender of the contract, and issues in the transfer of necessary information between the outgoing and incoming payroll providers. It seems likely that at least some operational processes may now need to be planned to go live after 1 December to provide the necessary lead in time after Royal Assent, and to allow for the operational change processes needed. Detailed scoping of the options for full or partial go live on each of 1 December and 1 January are in train.
23. Interim arrangements may be needed to ensure that operational support from Defra continues between our vesting and go-live dates, including the work of interim staff. This is in development. There is uncertainty to be resolved in the detailed operation of the financial, asset and liability transfers between Defra and OEP as OEP is established.

Recruitment

24. Delegated Grades: since the last Board meeting we have completed all wave 2 interviews and continue to be encouraged by the quality of candidates secured. Candidates recruited in the summer are beginning to arrive having completed pre-employment checks.
25. A further Investigation Officer role closed on September 27. As with other campaigns successful candidate information webinars have been held to engage candidates and encourage applications.

26. Executive Recruitment: We have engaged Gatenby Sanderson to manage our Executive Recruitment Campaign for the four Executive Director roles. This launched on 26 July. Long-listing is complete and short-listing starts in the week commencing 20 September. The field is strong across all four roles. Interviews will be undertaken in early October, following psychometric and internal stakeholder testing. The Chair, Interim CEO and nominated board members are participating in the recruitment, selection and interview process. Interview panels include an external, senior and independent member.
27. Staff Transfer Scheme: the OEP Establishment team are working with colleagues in Defra to secure both the legal basis for the Staff Transfer Scheme and the process to implement it. The timescales are tight and there are significant risks linked to dependencies around payroll and the provision of data by third-party suppliers operating under Defra supplier arrangements (SSCL) noted above. Plans for a contingency date of 1 January 2022 are being developed, should a 1 December 2021 implementation not prove deliverable.

Estates

28. Significant progress has been made with estates. The Interim OEP has now formally moved in to Worcestershire County Hall, in the small office suite in the lower ground floor. We are physically separate from the rest of the Defra bodies. We can occupy this limited space until the permanent office is ready for occupation. Colleagues have begun to attend site, and further attendance is expected as local permanent recruitment grows. It remains the case that all staff remain predominantly home based unless they wish to attend an office – either the Worcester office or their contracted Defra home office. Teams are however starting to arrange to attend the office together periodically as they start to form into the permanent OEP structure.

This section has been redacted as its publication would be prejudicial to commercial interests.

IT Establishment

29. End-user Computing: we have been engaging with the chosen supplier to refine our requirements during a discovery stage for the OEP IT provision. This included workshops on network resilience, SharePoint, the Intranet site and printing. These workshops have allowed the supplier to confirm specific costs, which are now budgeted for in our forecasts. The costs are higher than had been expected but are included within the forecast noted above. This has proven a challenging service to procure, with no suppliers participating in the initial expressions of interest procurement phase. A direct award, from a Crown Commercial Services framework was therefore necessary.
30. There is material risk that the planned date of 1 December for all staff to have OEP laptops cannot be met and may be delayed for one to two weeks. This is due to a combination of external factors such as a shortage of IT equipment and lead times in delivery of laptops, but also issues with availability of Defra procurement staff throughout the procurement phases. We are on track to deliver an early delivery of five devices. Complaints should then be received to the OEP (rather than Defra) laptops, testing can be carried out on other systems such as HR and payroll, and the Chair and CEO email accounts can be managed from the OEP. We expect full transfer in December.

Human Resources

31. The first OEP welcome day was held on 14 September in Worcester and attended by Dame Glenys, Richard Macrory, me and other senior staff. We welcomed ten new colleagues who will transfer to the OEP once vested. Sessions considered the OEP and its evolution, our mission, guiding policy and culture, and HR, L&D and wellbeing matters. A questionnaire has been sent to these new starters to gather feedback on their OEP experience so far, including recruitment, selection, onboarding, induction and the day itself. We are currently adjusting the design of the day for the next intake of staff following feedback from facilitators and delegates.

32. Our induction plans also include a welcome day for all managers (those in G7 and above). This has been deferred until November, to allow focus on developing sessions to explore the culture and leadership needed to enable the OEP to succeed. We are seeking the support of an external facilitator.

33. The HR and Payroll system

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will be tested in October to make sure that it has been configured according to the blueprints and is working as expected. This User Acceptance Testing (UAT) process commences week commencing 27 September. If successful, the HR and Payroll system is deemed to be ready for launch on 1 December. If any significant errors are identified, this may cause delay to delivery timelines. As noted above, the HR and Payroll system must launch on the first day of a month – a contingency date of 1 January is being planned for.

34. Following the Board's acceptance of our recommendation to recognise a Trade Union, consultation on agreeing a partnership agreement are in early stages. Is es

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35. Work continues to draft and refine the remaining HR policies, guides, documents, and templates. The work is on track to deliver necessary products for the time staff transfer to the OEP policy framework, with the bulk of remaining activities to develop procedures to implement policies agreed.

Northern Ireland (NI)

36. Progress in NI is delayed.

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This means that the NI appointee is unlikely to join the Board on a designate basis before December at the earliest.

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There are a range of other matters to progress around our expected role in NI, including organisational design, recruitment planning and funding. We have a new interim member of staff arriving in October, funded by DAERA, who will lead on these issues. To the extent

possible, we will avoid bringing substantive NI matters for decision to the Board until the NI member is appointed and our remit confirmed.

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Constitution and Governance

Environment Bill

37. As set out in previous notes to the Board, the Environment Bill was significantly amended at the House of Lords Report Stage.

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OEP Constitution and Governance

38. A programme of activity is in train to support development of the governance arrangements for the OEP on establishment. All of these arrangements are intended to be completed this calendar year, and where necessary brought to the Board to agree at its meetings in November or December.
39. The Cabinet Office has recently prepared draft guidance and a self-assessment tool for arm's-length bodies to consider their governance arrangements. All areas covered within that self-assessment tool are in place or within our planned programme. Progress on these arrangements has been put under pressure due to resourcing constraints including the need to prioritise engagement with matters such the spending review, which has taken up a significant amount of staff time.
40. Key areas of continuing work include:
- a. **The OEP's risk policy, and associated risk registers.** In the interim, programme risks are managed within programme structures for each of the establishment, strategy and functions and monitoring of the 25YEP work programmes which constitute the substantial majority of the OEP's work programme. An organisational strategic risk identification session has been held, in anticipation of the development of a strategic risk register.
 - b. **The framework document setting out the relationship between the OEP and Defra.** Early discussions have been held

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- c. **The performance framework between OEP, Defra and HMT including measures on the value for money OEP provides.**

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- d. **Financial and non-financial schemes of delegation.** The development of comprehensive non-financial schemes of delegation is dependent on work on our strategy and functions, and the operational design and process decisions which support them. In the interim, a scheme of reserved matters for the Board is in place with other delegations remaining with me as Interim CEO. It is planned that an interim scheme of delegation be produced, to be further developed alongside operational processes, and with input from the incoming executive directors.
- e. **A transparency and publications policy.** This is intended to be brought to the Board for consideration in November.

41. Alongside these significant areas, revisions to the governance framework approved by the Board, and some remaining, smaller, policy areas (such as a whistleblowing policy) are in preparation. It is likely that some documentation of the arrangements to be in place between Defra and the OEP will be required, to provide the necessary arrangements between vesting and operational go live of the OEP for the OEP to continue its operations. This may be through amendment to the Interim OEP's Terms of Reference or an ancillary agreement.

Interim Functions

Complaints

29. We have received one further complaint since our last report, taking the total number to 21. The number of general enquiries is steadily increasing.

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

30. We have received our first 'service complaint', in which a complainant queried how we had treated a complaint they had submitted in July.

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30. We have published further information about the remit of public authorities on our website. This has been received positively by stakeholders. We are exploring improvements to the complaint form in response to feedback, with the aim of simplifying matters.

31. We will publish our first Interim OEP complaints report in early October, covering the period 1 July to 30 September.

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Advice

42. My last report noted that Minister Pow had asked for our input as Defra develops guidance that will accompany the environmental principles' policy statement and considers how the principles will be effectively disseminated and embedded across government.

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43. We have responded to the civil procedure rules consultation and our response has been published on our website.

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44. At the meeting in July, the Board approved a decision tool to determine whether we should provide advice, or respond to a consultation under our broader powers. Due to resource constraints, we have not tested this tool extensively as yet. However our preliminary view is that it works as intended – as a guide for qualitative judgements to be made without being too prescriptive. Many consultations pass through the tool successfully, enabling us to exercise judgement and, where necessary, seek the views of the Board as to whether we should respond to a particular consultation. We think that, prior to the production of our strategy and whilst operating as the Interim OEP, the tool is fit for purpose. This will be reviewed within development of the OEP strategy.
45. The Board previously questioned how we might keep track of government’s work following a public consultation. We have just begun to consider this question. The work we undertake with the environmental principles implementation team will help us to form a proposed approach.

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Monitoring of the 25YEP

46. The Board agreed the strategic objectives for our 25 YEP monitoring report at its 12 August 2021 meeting. The Board also agreed to aim for publication of our report by the end of January 2022 rather than ahead of COP 26, given the complexities of reporting ahead of vesting and the commencement of our functions. In those Board discussions, we were assuming government’s annual report on progress against the 25 YEP would be published in August this year.
47. Publication of the government’s report has now has been further delayed, however – potentially to mid-October. This is not in itself problematic for the OEP, as we have six months in which to respond whatever the date of publication. What is more, the new timetable may help us in that we are likely to be fully vested and operational within the likely six month period, giving standing to the report. In short, there is an opportunity to consider afresh the aiming date for the OEP’s report, should further time be necessary or desirable.
48. That said, we are broadly on track to have a report ready for sign off at the December Board meeting, with mechanisms in place to identify and mitigate risks to delivery. An early draft of the report was discussed at the September Steering Group. The team have been grateful for the insightful input that Board members have provided over the past two months. This has been extremely valuable in shaping our approach, especially in the absence of an expert panel. We have also established an ambitious programme of stakeholder engagement, which will be covered in a separate paper today.

49. Early work on developing a long term strategy for our 25 YEP monitoring function and the governance needed to support this (alongside development of the OEP strategy) is underway. Initially, this will help to inform priority areas for commissioning evidence and identify core capabilities needed within the Insights Directorate. This will be a key priority for the Chief Insights Officer, once that individual is selected and in post.

Strategy

50. Considerable work has gone into developing proposals for the OEP's enforcement policy and its wider strategy. Aspects of this are the subject of separate papers. In parallel, we have instructed external counsel (David Hart QC) to analyse recent cases of public law environmental litigation. Counsel's final report is at Annex D. We will take account of this report as we develop the OEP's strategy and enforcement policy further.

Finance and Resource

51. The organisation's finance position is set out at the start of this paper.

Impact Assessments

Risk Assessment

52. There is a risk that transition in resourcing, and availability of staff resources impacts our ability to meet challenging delivery plans in each of our core programmes of work. This is mitigated by active prioritisation, and from the new recruits now arriving.
53. There are risks in the planned implementation date of 1 December for operational 'go live' of the OEP noted above. Contingency planning is underway to mitigate, such that the OEP will operationally be established between 1 December and 1 January.
54. There are risks in the preparation of our monitoring report for the 25YEP, considered in reports to the steering group. Particular risks include securing appropriate external expertise, and stakeholder engagement to test and refine findings, and the impact of delay to the government's own progress report.
55. There are risks relating to the development of the OEP strategy, and the planned stakeholder engagement set out in subsequent papers on the Board agenda.

Equality Analysis

56. 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 its publication would be prejudicial to the effective conduct of public affairs, contains personal data or relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement