



# Office for Environmental Protection

## Agenda

Meeting of the Board

Tuesday 5 September 2023 9am

MS Teams

## Members

Malcolm Beatty OBE	Board Member
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
Helen Venn	Chief Regulatory Officer

## OEP Attendees

Peter Ashford	General Counsel
REDACTED	Senior Projects Officer (item 23.68)
REDACTED	Principal Finance Officer (item 23.72)
REDACTED	Principal Monitoring Environmental Law Officer (item 23.68)
Donnacha Doody	Head of Analysis (item 23.71)
Mike Fox	Head of Communications and Strategic Relations
Helena Gauterin	Head of Environmental Law (item 23.68)
Richard Greenhous	Chief of Staff
REDACTED	Principal Scrutinising Environmental Law and Advice Manager (item 23.68)
REDACTED	Principal Complaints and Investigations Manager (item 23.73)
Andy Lester	Head of Business Strategy and Planning
REDACTED	Principal Monitoring Environmental Law Officer (23.70)
Cathy Maguire	Head of Assessments (item 23.69)
REDACTED	Principal Lawyer (item 23.73)
Professor Robbie McDonald	Chief Insights Officer
REDACTED	Principal Lawyer (item 23.70)
Kate Tandy	Head of Litigation and Casework (item 23.73)
REDACTED	Board Secretary and Private Office Manager (Secretariat)
REDACTED	Principal Lawyer (item 23.68)

#### **23.64 Apologies for absence and declarations of interest**

The Board received apologies from Malcolm Beatty, Board member. Paul Leinster's and Julie Hill's actual or potential conflicts of interest in relation to item 23.73 (*this section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement*) were noted; they were recused from the discussion of that item.

#### **23.65 Minutes and Matters Arising**

The Board AGREED the minutes of the 12 July 2023 Board meetings and the 25 July 2023 and 17 August extraordinary Board meetings.

The Board emphasised the importance of publishing the Board papers and minutes on the OEP website in a timely manner in the interest of transparency.

The Board noted that it had AGREED via electronic business to provide advice to the Secretaries of State for the Environment, Food and Rural Affairs and Levelling Up, Housing and Communities after the UK government introduced amendments to the Levelling-Up and Regeneration Bill.

#### **23.66 Update from the Chair of the Audit and Risk Assurance Committee**

At its last meeting, the Members of the Committee reviewed the Q1 finance report. The discussion provided constructive challenge to support close scrutiny of the financial outturn this year.

The National Audit Office requested, and it had been agreed, that its audit be delayed until later in 2023, which would delay the laying of the accounts.

The Committee thanked the Executive for the progress on financial and strategic risk reporting.

#### **23.67 Report of the Chief Executive Officer**

The Board noted the progress of the research and evidence work, and that it will be a mixture of research to identify new findings and research to consolidate and synthesise existing evidence. It urged for careful planning of consultancy work to ensure a steady flow, rather than peaks and troughs, as we head into the next business planning cycle.

The Board was informed that some analysis had been undertaken ahead of the proposed amendment to the Levelling-Up and Regeneration Bill (LURB) on which we provided advice to government, as the potential issue had been identified through our horizon scanning work. The Chair and Chief Executive had also met with senior leaders from Natural England *this section has been redacted as its publication would be prejudicial to the effective conduct of public affairs*.

Our advice letter (agreed by the Board) prompted an immediate meeting with the Secretaries of State for Defra and DLUC, and an exchange of letters between us and Defra. The Duke of Wellington has since proposed an amendment to reverse government's proposals. All amendments will be debated in the House of Lords in the week commencing 11 September 2023.

We have submitted advice to DAERA on its Environmental Principles Policy Statement (EPPS), following constructive discussions with the department.

Relations remain constructive with Environmental Standards Scotland (ESS) and the Interim Environmental Protection Assessor for Wales (IEPAW). We sent our first joint letter with ESS and IEPAW to the Joint Nature Conservation Committee on Special Protection Area reviews.

We have seen a reduction in the number of complaints received and an increase in enquiries. This may be a result of the improved information we have made available on the type of complaints we deal with.

*This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

Work is progressing on *this section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement and as its publication would be prejudicial to relations within the United Kingdom*, and we have responded in brief to DAERA's call for evidence on a revised Operation Protocol.

We have launched our People Strategy, in line with what has previously been discussed with the Board.

The Board congratulated the Executive on the progress towards the move into the Wildwood office. It queried whether we will see a level of staff attrition as a result. The Executive is aware there is some concern for a minority of staff, but the expectation for staff has been clearly communicated and the messaging has remained consistent.

### **23.68 Environmental Assessments Draft Environmental Law Report**

The draft report was presented.

The team updated on the latest intelligence available on how this might be useful to the Department for Levelling Up, Housing and Communities (DLUHC) in its consideration of proposals for reforms in this area. *This section has been redacted as it contains information provided in confidence.*

The Board had previously endorsed the headline message and three suggested themes of the report – access to the necessary information, post-decision monitoring and access to the necessary expertise.

The Board discussed the need to contextualise our conclusions in the bigger picture of proposed reform. It judged our key points to apply equally to any revised regime.

The Board provided feedback on the report's overall tone and level of detail, in particular whether it would benefit from the inclusion of yet more evidence substantiating our conclusions, including from the consultants' reports. The Board encouraged officers to make the report as impactful as possible with the information we currently have, whilst laying the final report before Parliament on 19 October, as planned. In discussing the recommendations, the Board noted the lack of skills and expertise as a key issue for the sector. There is a fundamental skills gap that, if filled, would address several issues. The problem is twofold; the lack of funding, and the lack of training and education. The two are interlinked.

The Board noted that, on current plans, its next opportunity to consider the report will be as a final version for approval at its meeting on 28 September. Any Board member should advise officers if they wish to have additional opportunities to review the report before its approval, noting the short window to lay in Parliament and to influence DLUHC's work.

### **23.69 England EIP Progress Report**

The Board noted development of the EIP monitoring and assessment process to date. The Board noted progress towards delivery of the England EIP 2022/23 progress report and the planned publication timetable.

It considered and commented on proposals for in-depth and cross-cutting assessments for the England EIP 2023/4 progress report.

The Board considered the merits of a continued focus on improving nature, and a focus on water in this report. It judged that our existing work programmes related to water will be in the public domain, the importance of government's apex goal, and the planned activity for this year's report that may not be complete by year end.

The Board endorsed a continuation of the improving nature theme for the 2023/24 report. The Board encouraged a broader look at nature in that report and welcomed the intention to comment on trajectories. This is particularly important in the context of the targets. It would also advocate for an expansion into environmental land management schemes (ELMS), and their implications for more than just biodiversity: the management of land in agricultural use is so central to many of the government's ambitions for the environment.

The Board welcomed confirmation that the reports will have a consistent system to measure progress, for example a traffic light system, to show change over time. It noted that movement between years may be limited, given changes are reliant on more up-to-date data, which is not available in all cases.

The Board highlighted the need for government to embed plans in delivery bodies and not just central government. This will ensure longevity and consistency in delivery.

The Board AGREED the continued focus on improving nature for a second year.

### **23.70 Draft findings and recommendations from Project Belisama**

The Board discussed the emerging key findings and provisional recommendations for England. It focused on points of substance in the draft report summary and on the proposed structure for the final reports.

*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 queried the "one out, all out" rule, and considered our analysis in this regard not yet complete. It suggested that case studies would be helpful, as well as explaining the rule in the context of the data to provide a holistic view.

The Board urged for the England report to consider Defra's plan for water and align the publication of that report alongside it. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs and it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement.*



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The Board commented on the draft recommendations. 15 are proposed, and the Board considered that too many. It advised against amalgamating recommendations. Instead, it urged greater focus on the key points. It suggested, for example, that proposed recommendation six - *this section has been redacted as its publication would be prejudicial to the effective conduct of public affairs* - could be removed.

The Board suggested sharpening the tone of the report from that of the draft report summary, and making it similar to the tone of the Board paper, to maximise the impact of the recommendations.

## **23.71 Northern Ireland Drivers and Pressures**

The Board considered the options analysis outlined in the paper for a report as proposed in the absence of a Northern Ireland EIP being published. It sought assurance on the scope of the report, and that this was a contribution that would be different and is appropriate for the OEP to make.

The Board urged officers to take into consideration the relationship between biodiversity, land management and the agri-environment.

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

The Board AGREED that in lieu of our annual progress assessment of the NI EIP, we publish a 'stock-take' report on drivers and pressures affecting the natural environment in Northern Ireland, within the resource constraints of the 23/24 business plan.

The Board AGREED that the report scope be limited to the terrestrial and freshwater environments so would not address the marine environment. The Board pressed however that other workstreams in train be appropriately prioritised so that we cover important issues in the marine environment in seas around both England and Northern Ireland.

## **23.72 Finance Report**

The Board was presented with slides outlining the Q1 financial position, which had developed since being considered by ARAC.

The Board noted that the Executive took action in July to mitigate risks of overspend then apparent. We have since had confirmation of additional funding which, when combined with action taken, results in a forecast underspend *this section has been redacted as its publication would be prejudicial to the effective conduct of public affairs*. The Executive will be meeting this week to discuss the potential for over or underspend this year. The Board expressed its confidence that steps were available to remedy departures from budgets, including by revisiting decisions taken.

The Board asked for an update on how recruitment is progressing. We are now slightly behind our projection at the start of the year, having been recruiting ahead of schedule in Q1. We are getting high levels of interest in most advertised roles. That we have not been able to recruit as fast as we would have liked is one of the reasons for the underspend now forecast.

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

Paul Leinster and Julie Hill were recused from the discussion due to actual or perceived conflicts of interest.

The Chief Regulatory Officer presented the paper and reiterated the aim of the investigation; to establish whether there has been compliance with environmental law by the three public authorities involved, Defra, Ofwat and the Environment Agency. The investigation to date has concluded that there may be non-compliance with environmental law, and that this may be persisting.

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**23.74            Any other business**

There was no other business.