

Board Paper

Date

22 May 2024

Title

Report of the Chief Executive

Report by

Natalie Prosser, Chief Executive

Paper for information and decision

Open in part

Summary

1. The context of our work over the coming few months will inevitably be impacted by the upcoming General Election. At the time of writing, the Election has just been announced. We will discuss the steps we are taking in preparation for the outcome of the Election as well as any implications for our programme of work at the meeting. Some of the matters set out below are likely to be impacted and we are working through any implications.
2. Much of our focus since my last report has been on launching our report into the Water Framework Directive (WFD) regulations. We have largely been pleased with the early reception and degree of interest.
3. This marks the start of a particularly productive period for the OEP, as a number of key external facing activities reach conclusion or a critical, and public stage. *This section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement*, our report on the implementation of the Water Framework Directive regulations in Northern Ireland (currently planned for publication in July), *This section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement*, and progress in our report on the pressures and drivers of biodiversity in Northern Ireland (September). It is within this context that we will also consult on an updated strategy.
4. *This section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement.*
5. Our work on bathing waters and on the designation and management of protected sites in England and Northern Ireland will come to conclusion in the autumn, *This section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement.*

6. Our work in the next six months is therefore very likely to have more public prominence than has been the case to date. We progress this active programme in an election year, and we are improving the extent to which we monitor and revisit delivery plans so that we can be responsive to changes in circumstances which may arise, and how we keep the Board informed about future pipeline so it can support us best have the impact we intend – in each individual issue and activity, and as a whole.

Recommendation

7. The Board is recommended to note the progress in delivery of our strategic objectives.

Strategic Objective 1 - Sustained environmental improvement

Monitoring environmental improvement in England

8. The scope and approach for the next EIP progress report was agreed by Board on 16 April. In its 2 May meeting the Board asked for clarification regarding the OEP's remit in connection with our associated work on green finance. A short note on this is provided at Annex A.
9. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*
10. We are assured that Defra's response to our report of January 2024 (on progress in 2022/23) will be earlier and more substantive than previously. We expect this may accompany the APR or be published shortly afterwards.
11. Defra has released the species abundance indicator related to the 2030 and 2042 targets. It is a robust piece of work that tackles the complexity of combining a vast dataset into a single measure. We have some reservations on methodology which we will feed back, as requested. However, we have specific concerns about how the indicator will be used to assess whether the species abundance target is met. In essence, the nature of the indicator and trends means largely random variation in conditions in 2029 and 2030 is likely to determine whether the target is met, or not, irrespective of genuine change. We are considering how best to present these concerns.

Monitoring environmental improvement in Northern Ireland

12. The Board will separately consider progress in respect of our report on the pressures and drivers affecting biodiversity in Northern Ireland, and our approach to the continued absence of a Northern Ireland EIP.
13. In our scrutiny of the coherence of the Climate Action Plan (CAP) and EIP, our suppliers Ricardo have received feedback from DAERA and NGOs on their analysis of the Energy Strategy, Peatland Strategy and Future Agricultural policy. The work will now be paused until the CAP is published for consultation later in the year.

Other evidence

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14. Reports for the 12 evidence projects commissioned in the year 2023-24 have now been received. A number of dissemination meetings have been held, including with OEP staff and external parties. We are considering how and when best to make reports generally available internally, and externally via the website.
15. We have tendered two projects under our evidence programme for 2024-25, in line with the business plan the Board agreed. In general, we aim to commission earlier, to ensure a more orderly intake of evidence and pattern of expenditure, over the year.
16. The largest elements of our planned evidence gathering relates to improving nature at sea (which the Board will consider separately on its agenda), nature friendly farming (where the Board agreed the intent and objectives in its last meeting), and nutrient management in Northern Ireland. The Board will consider the intent and scope of this latter programme of work shortly – we judge it likely to consider wastewater, government’s Nutrient Action Programme, and Future Agricultural Policy.
17. We will be developing our approach to commissioning evidence activities and the associated governance to it over the coming year. We have found benefits in using the College of Experts to assist in developing proposals and supporting the quality assurance process, and intend to build upon and formalise this approach. Last year, we made two short-term appointments to access specific expertise on a time limited basis. We will seek to expand the routes to do so, including through policy fellowships, delivered in partnership with professional and research bodies. As the Board agreed, we are also exploring different ways to procure a proportion of our evidence needs, through a framework or over-arching contract towards the end of the year.

Strategic Objective 2 - Better environmental law, better implemented

Water Framework Directive (WFD) regulations reports

18. Our report on the implementation of the WFD regulations in England was published on 9 May and received wide media coverage, including BBC Breakfast television, BBC R4 Farming Today and the Today Programme, as well as all major print and on-line news outlets. The response on social media was mainly positive, with leading eNGOs and other groups and individuals with an interest in water quality amplifying our messages.
19. Defra issued a response on its blog page, also on 9 May, claiming inaccuracies in some of the figures used in the report, and taking issue with some wording in our press statement. We responded to press enquiries, standing by the accuracy of our report. This exchange was reported in ENDS, which also published a ‘fact-checking’ article which supported our position. There has been some commentary on social media, largely commenting on Defra’s use of its blog to make such an intervention. We have since met and discussed with senior officials, and Ministers.
20. On 15 May, the Environmental Audit Committee held an evidence session on water quality and water infrastructure, with evidence from Minister Moore (the Minister for Water and Rural Growth), David Hallam, Defra’s Director for Floods and Water, David Black, Chief Executive of Ofwat, and a number of senior figures from eNGOs. The Committee was briefed on our report and it featured prominently in the questioning, with a particular focus on our first

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recommendation: that the Secretary of State and the EA should take urgent action in accordance with Regulation 25 of the WFD Regulations.

21. The Board will consider our report on the implementation of the WFD regulations in Northern Ireland separately on its agenda.

Interventions

22. We are undertaking the relevant preparatory work ahead of recommending to the Board whether to apply to intervene in the Court of Appeal case *Pickering Fishery Association v SSEFRA* at its July or August meeting. The case relates to the correct interpretation of the WFD regulations, including several issues identified in our report. The window for the hearing to take place is between December 2024 and February 2025.

23. We await the Supreme Court's judgment in *R (Finch) v Surrey County Council*. This is now the second oldest outstanding judgment from the Supreme Court. The oldest is *Manchester Ship Canal v United Utilities* – *This section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement.*

Compliance assurance

24. As the Board agreed, Julie Hill has reviewed the design and implementation of the evidence gathering related to this project on the Board's behalf, and the lessons we have identified. Her conclusions have been provided to the Board. Julie will provide a verbal update to the Board at the meeting.

25. The work is progressing broadly as planned. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.* More broadly, we have established two specific engagement groups with the EA for the duration of the project: first at an operational level to meet monthly to enable the project, and second at a more strategic level to meet quarterly to consider findings and strategic questions.

Strategic Objective 3 - Improved compliance with environmental law

Complaints and enquiries

26. Since January 2021 we have received 1,335 enquires and 121 complaints. Since my last report, we have received six new complaints and handled 100 enquiries. We have 10 open complaints in the assessment phase.

Casework and interventions

27. We coordinated the closure of two long-standing complaints relating to failures to protect the River Axe and the Wye catchment with the launch of our report on the implementation of the WFD regulations. This allowed us to explain how we have considered and will seek to address the issues raised in their complaints through our work programme.

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

29. We have made adjustments to our website and reporting, in light of feedback. Details of our casework and investigations are now accessed via a new "investigations" tab, and we are exploring additional improvements to the casework page. We have restructured both our internal and external complaints reports to put greater emphasis on our outcomes and achievements, and aim to finalise and publish these where relevant later this month.

Progress in investigations

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

Co-operation from Defra

31. As noted above in relation to the provision of information in respect of delivery planning, we have had positive discussions with policy teams on various matters in respect of a desire to reset relations and co-operation. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

Strategic Objective 4 - Organisational excellence and influence

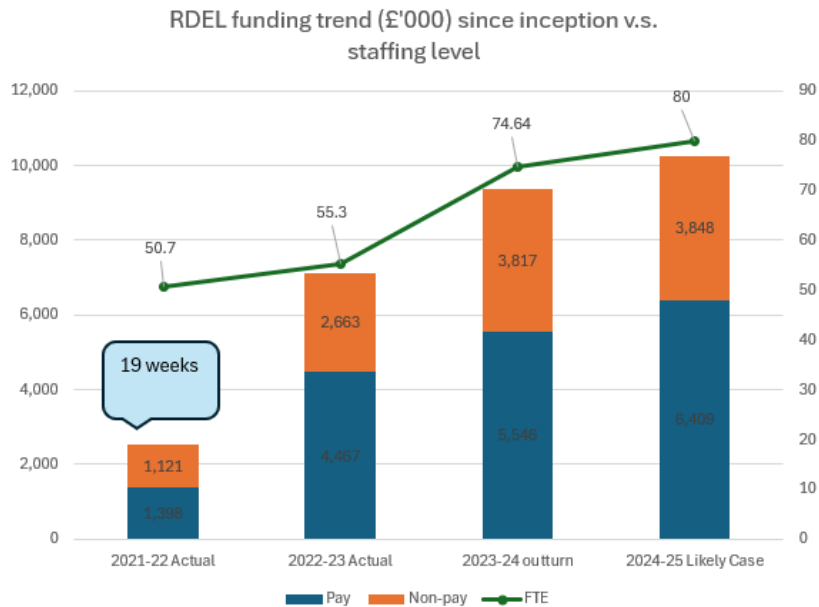
Financial out-turn

32. We closed the 2023-24 financial year on 10 May 2024, six weeks after year-end. This is a material improvement from the three months we needed to close the 2022-23 financial year; made possible by improved processes and temporary staff. We will continue to explore process enhancement, and new tools such as AI, to deliver high quality financial insights for timely decision-making.

33. The 2023-24 out-turn set out below is in line with the draft position reported to ARAC on 1 May and shows an overall underspend of £0.178m or 1.6%. This is a substantial improvement compared to our £3.893m or 32.2% underspend in 2022-23. This reflects our growing maturity, confidence and effectiveness in budget management. A total of £0.048m of adjustments were made after ARAC's review relating to holiday accruals, post-year end invoices and expenses, secondee cost adjustments and final costs in relation to our IT contract. We aim to present our audited accounts to Parliament by the end of October.

OEP 2023-24 outturn position	2023-24 funding			2023-24 Outturn position			2023-24 draft position reported to ARAC on 1/5/2024	
	Funding Allocation as per DADv4 (£)	Defra IFRS16 adj (£)	Defra Approved 2023/24 Budget (£) - per R&O return (£)	2023-24 Actual/ Outturn (£)	(Over)/ Underspend (£)	Variance against Defra approved budget (-%: over spend)	(Over)/ Underspend (£)	Variance against Defra approved budget (-%: over spend)
RDEL Pay	5,751,355	(243,000)	5,532,052	5,615,733	(83,681)	-1.5%	(49,226)	-1%
RDEL Non-Pay	3,857,558		3,838,703	3,631,895	206,808	5.4%	220,144	6%
Total RDEL	9,608,913	(243,000)	9,370,755	9,247,628	123,127	1.3%	170,919	2%
Depreciation	123,271		243,000	185,236	57,764	23.8%	57,764	24%
CDEL	1,231,701		1,231,701	1,234,587	(2,886)	-0.2%	(2,886)	0%
Total	10,963,885	(243,000)	10,845,456	10,667,451	178,005	1.6%	225,797	2%

34. Our actual RDEL spend and actual average FTE trend since inception is illustrated below.



2024-25 resources, budget and business plan

35. At the time of writing (20 May) we await confirmation of DAERA’s contribution to our 2024-25 budget. We understand this is a consequence of wider delays to finalising Northern Ireland’s overall budget and that others awaiting confirmation of funding from DAERA are similarly affected. We remain in close touch with DAERA officials and raised directly with Minister Muir in our recent meeting.

36. We may soon need to finalise our budget, business plan and financial delegations based on an assumed DAERA contribution, and within the constraints of the funds so far delegated to us by Defra. As discussed with the Board at its last meeting, we will be able to move very quickly to finalise our budget and business plan if DAERA confirm a contribution within the range that we have planned for. It will be harder and take longer if it falls outside that range.

37. In the interim we continue to operate under the temporary financial delegations put in place at the beginning of the new financial year, allowing commitments up to 75% of 2023-24 budgets. This risks us spending Defra funding on activities in Northern Ireland, but that risk would only materialise were DAERA to confirm a contribution far below the range we have planned for. We have written to our Defra Senior Sponsor to set out this risk.

38. Our draft corporate plan has been submitted to Defra for consultation, as is required under our draft framework agreement. We will do similarly with DAERA, once we have made any necessary adjustments in light of our budget settlement, when known.

Recruitment and capacity

39. We have welcomed 2 new starters since the end of March. A permanent Senior Projects Officer after our 2 temporary senior projects officers left in March and May, and a Senior IT and Digital Services Officer filling a vacancy we have had since autumn 2023. We welcome a new

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Board Secretary and Private Office Manager in early June, filling a vacancy open since December.

40. As the Board agreed at the start of May, we are progressing or preparing for additional recruitment to deliver our plan for the year ahead. The full extent of this will depend on NI resourcing. In addition to these roles, we may progress short-term temporary appointments in relation to some of our evidence gathering work, where this is the best route to secure value and where this can be managed within our overall headcount constraints. These would be in lieu of external commissioned evidence.

Wave	Type	Grade	Directorate	Role	Status
Perm 2024	Permanent	G7	General Counsel	Principal Lawyer	Offer made from reserve list
Temp 2024	FTA/ STA	G7	General Counsel	Principal Researcher	Offer made from reserve list
Perm 2024	Permanent	G7	Insights	Principal Analyst	About to be advertised
Temp 2024	FTA	SEO	Chief of Staff	Projects and Reporting Officer	
Temp 2024	FTA	EO	Chief of Staff	Project Support	Reserve list being considered

41. On 23 April we welcomed 41 members of our College of Experts to Worcester and a further 12 online to a welcome day, 91% participation across the group. We have made 16 requests for engagement to the College to date, including to peer review of invitations to tender, OEP and contractor reports, input into project scoping and participate in workshops and expert panels.

Ways of working

42. We have been in discussion with Defra group arms-length bodies on operational improvements to our approach to co-operation and information sharing. We have developed a draft 'ways of working' document, to set out our high-level approach and confirm the operational improvements we have recently made, and held a productive workshop to discuss.

Speaking engagements

43. We have undertaken a number of speaking engagements since my last report. Dame Glenys and I spoke at a meeting of the Broadway Initiative, and I spoke at a Rivers Forum event at the start of May. The Chief Insights Officer spoke at the All-Ireland Climate and Biodiversity Network at Queen's University, Belfast, and Chief of Staff spoke at the CIEEM Ireland 2024 Conference in Dublin and the NI Environment Forum 'Protecting the Environment for Future Generations' event in Belfast.

Information technology and data

44. User acceptance testing for the Intelligence Management System is scheduled to complete at the end of this week in preparation for roll out in June.

Procurement

- 45. The first iteration of the 2024-25 procurement pipeline has been produced based on the planned external spend in the business plan. This internal tool was found to be a valuable approach last year, informing capacity planning in the procurement team and resulting prioritisation and smoothing.
- 46. Our new e-procurement system (Panacea) is now live and we have completed our first procurement through it. To minimise any risks to procuring contracts for teams we will continue to implement the system in a stepwise way, switching on additional functionality only when we are confident in each new steady state of working. Updating our procurement processes and guidance, and training relevant staff, are being undertaken in parallel. The e-procurement system and the related activities support the delivery of the four internal audit recommendations, which are in progress.

Impact Assessments

Risk Assessment

- 47. ARAC considered our strategy risk register in May. This included the outcome of a review of our reputational risks, which ARAC encouraged us to complete to ensure clarity in the key risks and appropriate mitigations. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*
- 48. ARAC also considered a review of our Risk Management Framework, and our intended approach to develop risk appetite with the Board in the year ahead.

Equality Analysis

- 49. No material equality implications have been identified in this paper.

Environmental Analysis

- 50. This report gives an overview of strategic organisational developments which support the OEP’s principal objective. Consideration has been given in each case to how the activity contributes towards environmental protection and enhancement, and to ensuring the OEP meets relevant duties in environmental law. No specific proposal in this paper has a direct bearing on those duties.

Paper to be published	In part
Publication date (if relevant)	With meeting minutes
If it is proposed not to publish the paper or to not publish in full please outline the reasons why with reference to the exemptions available under the Freedom of Information Act (FOIA) or Environmental Information Regulations (EIR).	FOIA/EIR exemptions for which we propose not to publish this paper in full are: <ul style="list-style-type: none"> • publication would harm relations between UK and NI governments (s.28) • publication would harm the effective conduct of public affairs, including the Board's ability to receive candid advice and engage in free and frank discussion (s.36)

	<ul style="list-style-type: none">• publication would reveal information subject to legal professional privilege (s.42)• publication would harm the OEP's commercial interests (s.43)
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ANNEXES LIST

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