

Date

25 September 2024

Title

Report of the Chief Executive

Report by

Natalie Prosser, Chief Executive

Paper for information and decision**Open in part**

Summary

1. Our business plan for this financial year envisaged a busier second six months, given the timing of confirmation of our resources in Northern Ireland, and the inevitable adverse impact on recruitment and on mobilisation of projects. The general election exacerbated the situation, given the delay to publications planned pre-summer recess.
2. This report updates on our first significant public activity since the election, our report on the water framework directives in Northern Ireland. This is our first environmental law report in Northern Ireland, and the first of a series of three major publications in that jurisdiction. We have a similar sequence of activity in England in the final quarter of the business year.
3. The Board's agenda includes substantive updates and decisions in respect of three of our five investigations, as well as a proposal for a further intervention in judicial review. With our annual report in England in addition, this marks the start of an important period for the OEP – and our most sustained period of external facing activity to date. We are rising to this challenge, though there are pressures in particular areas and teams. Our processes for review and prioritisation in year seem to be allowing us to respond as we need to.

Recommendations

4. The Board is recommended to note the progress in delivering our strategic objectives.
5. The Board is recommended to consider and comment on the strategy and objectives of the nutrient programme for Northern Ireland, set out in the project initiation document at Annex B.
6. The Board is recommended to approve a variation to the contract with Boxxe by up to £20k.
7. The Board is recommended to note our latest forecast headcount and comment on my decision to increase the maximum in year peak headcount cap that we impose on ourselves from 85 to up to 91.5 FTE. This heightens the risk that we are seen to have used a disproportionate amount of the funding we receive from DAERA for staff. But I deem it

necessary to achieve our planned average complement of around 81.6 over 2024/25, and mitigate delivery and underspend risks.

Strategic Objective 1 - Sustained environmental improvement

Monitoring environmental improvement in England

8. The Board will separately consider the initial findings, key messages, a proposed approach to recommendations of our England 2023/24 EIP progress report as well as engagement with Defra during finalisation of the report.
9. The Secretary of State has commenced a rapid review of the EIP. We provided the requested advice to the Secretary of State by 12 September, as the Board agreed by electronic business. The final advice is appended at Annex A, and we have now published on our website.

Monitoring environmental improvement in Northern Ireland

10. Our report on the Drivers and Pressures affecting biodiversity in Northern Ireland will be published at the start of October, as the Board agreed. A draft communication strategy has been developed by the Communications team and is being circulated for wider discussion

Other programmes

11. The Board agreed that a significant focus of our work in Northern Ireland will be to consider the management of nutrients. The Board is invited to comment on the strategy and objectives of this strategically significant programme of work set out in the project initiation document at Annex B which is delegated (in our governance framework) for me to agree, in consultation with the Board.
12. Suppliers have been appointed and work has commenced on the agreed projects to review Marine Protected Areas and protected site management and the approach (including regulation) to bycatch of fish and sensitive species. We will shortly seek to procure a review of the UK Marine Strategy targets and data gaps. We were unsuccessful in recruiting a short-term position to review and assess marine governance with a focus on how effectively increasing pressures are managed, so we will now also procure this work.
13. Under the Improving Nature programme, our nature friendly farming evidence gathering project is progressing at pace. Analysis of the effectiveness of Environmental Land Management Schemes to support the EA21 species abundance and agricultural water targets has been completed. This shows a mixed picture: encouraging evidence of the capability of the schemes to support terrestrial species but limited ability to reduce water pollution and support freshwater species recovery. The evidence has pointed to further potential areas for our scrutiny, in particular compliance with farming regulations.
14. We have appointed a British Ecological Society fellow to undertake a project on pesticide pressures on the species abundance target. We are also interviewing candidates from a high-quality candidate pool for two further temporary positions for small evidence gathering projects on tackling chemical pollution at source through regulatory action in England and Northern Ireland. In addition, we are hosting the UK Centre for Ecology and Hydrology, Environmental

Standards Scotland and staff of the Independent Environmental Protection Assessor for Wales, at our Worcester office in September to discuss each of our work in relation to chemicals and pesticides.

15. The College of Experts is continuing to contribute to projects across the OEP, including peer review of our report on government's progress towards its Environmental Improvement Plan. We are also hosting a systems workshop with college experts on the topic of planning reform to support our understanding of this key issue.

Strategic Objective 2 - Better environmental law, better implemented

Environmental law reports

16. **Water Framework Directive (WFD) Regulations NI.** Our report was published and laid before the Assembly on 3 September. We met with the Minister, NI Water, DAERA, Department for Infrastructure, NI Water and a range of other stakeholders to discuss our work and findings, and I was interviewed five times for broadcast media. The report received a positive reception with Minister Muir indicating in our meeting that he accepted all of our recommendations. The formal response to our report is due to be laid before the Assembly by 3 December.
17. **WFD Regulations report England.** Defra published the Secretary of State's response to our report and laid it before Parliament on 11 September (see Annex C). The response is positive, welcomes our report, and accepts our key conclusions that not enough progress has been made in improving the water environment. It says this is due to a lack of investment and action over the last 15 years, when the first River Basin Management Plans were published. The response also commits to working constructively with the OEP and to taking action to accelerate progress on improving the water environment. It does not address each of our recommendations individually, but rather indicates that they will be considered further as part of the recently announced Government review of the water sector. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*
18. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*
19. *This section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement.*
20. We are completing our **Bathing water reports** in line with the steers and feedback from the Board on 4 September. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*
21. We have commenced stakeholder engagement as part of our scrutiny of **Local Nature Recovery Strategies (LNRS)**. We have three workshops scheduled with Responsible Authorities (RA) between August to October, with 15 of the 48 RAs attending the first. The workshops support us to build our evidence around the barriers and enablers that RAs are facing. We are holding a webinar for other stakeholders involved in LNRS on 19 September.

22. Early findings from our evidence gathering on the **Environmental Principles Policy Statement (EPPS)** include that there are positive indicators in relation to the processes put in place to support EPPS implementation. Whilst it is very early to draw strong conclusions on the impact that the EPPS has on individual policy decisions, there are some positive early indicators. We are in the process of developing our findings and recommendations and will be testing these with our Advisory group.
23. In Northern Ireland, we were asked by DAERA (informally) to provide feedback on the latest draft of their EPPS, which we expect to go out to public consultation in September. We are pleased to see that many of our recommendations have been addressed, and plan to lend public support to the EPPS when published, assuming no weakening of the provisions prior to publication.

Interventions

24. The Board will consider separately a proposal to apply to intervene in a Court of Appeal case – **Rights Community Action v Secretary of State for Housing, Communities and Local Government** – relating to the correct interpretation of the duty to have due regard to the Environmental Principles Policy Statement.
25. We plan to file our application to intervene in the Court of Appeal case **Pickering Fishery Association v Secretary of State for Environment, Food and Rural Affairs and the Environment Agency** on or around 23 September and a copy of the final submissions will be circulated to the Board for information. Both Pickering Fishery Association and the Environment Agency have formally consented to our application to intervene. At the time of writing, we are waiting to hear the Secretary of State's position. When the application has been filed, we will publish a short statement on our website.
26. Earlier this year, OEP intervened in the case of **Finch v Surrey County Council**. Following the Supreme Court's judgment in that case in June, the judgment in the West Cumbria coal mine case was handed down on 13 September 2024. The court quashed the planning permission for the coal mine because the environmental impact assessment (EIA) had not assessed the downstream greenhouse gas (GHG) emissions, as well as on three other grounds not connected to the *Finch* judgment. The Secretary of State had already conceded the claim in light of the judgment in *Finch*, but West Cumbria Mining Ltd defended the case.
27. The developers Shell and Equinor are defending judicial review proceedings in Scotland relating to the Jackdaw and Rosebank offshore oil and gas fields. The Government has announced that it will not defend those cases as it accepts that the EIAs were not carried out correctly as they did not assess downstream GHG emissions.

Consultations and other advisory activities

28. We will respond to the Government's consultation on the National Planning Policy Framework (NPPF), welcoming the proposals to strengthen strategic spatial planning and reiterating our findings in the last EIP progress report that improved coherence in spatial planning is needed for success in the thriving plants and wildlife EIP goal. We also intend to agree to a specific question that land identified for nature in LNRS should not be removed from the Green Belt,

and inviting the Government to go further in its amendments to the NPPF to explicitly make LNRS material considerations for plan-making and decision-taking.

Strategic Objective 3 - Improved compliance with environmental law

Complaints and enquiries

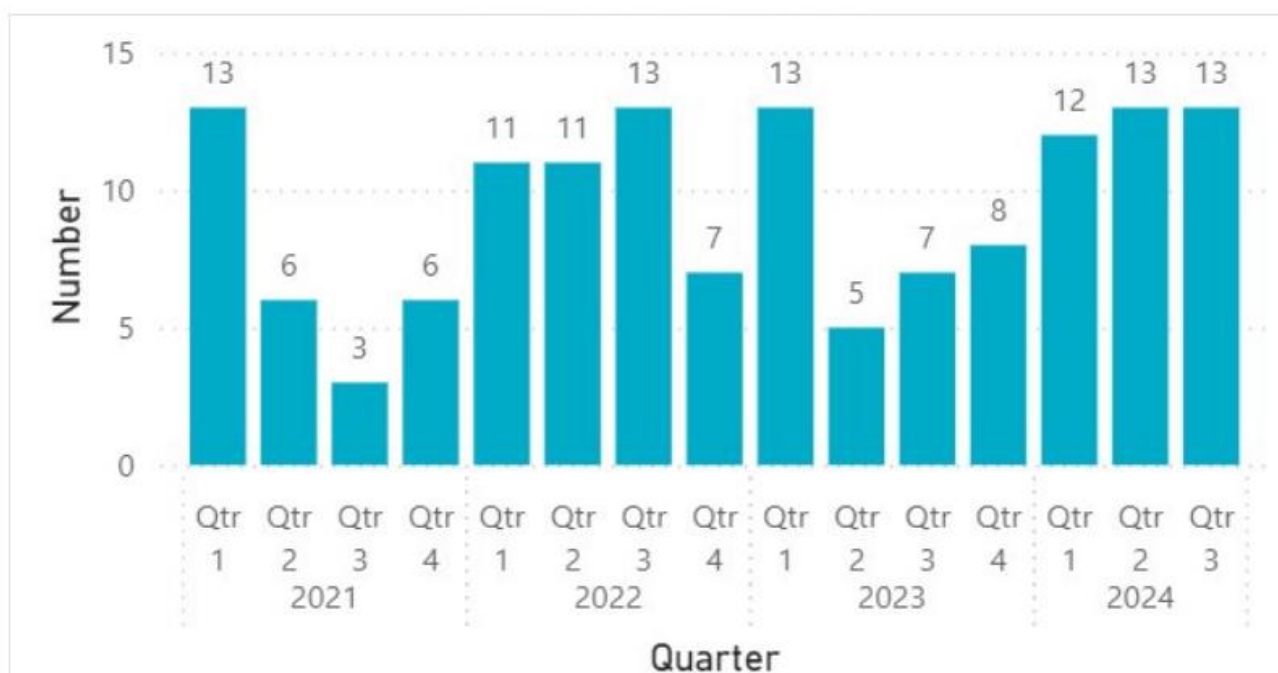
29. The diagrams below show the trend of enquiries and complaints over time – a steady increase in enquiries volumes, and more volatility in complaints. A low number of complaints in summer months, as has been the case since my last report, is typical of our experience to date. We have eight open complaints in the assessment phase.

Enquiries received per quarter since January 2021



30.

Complaints received per quarter since January 2021



31.

Progress in investigations

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

Casework and Interventions

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

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Strategic Objective 4 - Organisational excellence and influence

Financial performance

35. The Board will separately consider paper 24.90 ‘Q2 Finance our financial performance and risks’ as we approach mid-year.

36. The Board has previously agreed to an approach to managing our headcount constraint (which limits us to 65 FTE in England and applies no constraint in Northern Ireland). In June, we expected our headcount to average 81.2 FTE over the year, and peak at 85 FTE, and for 76.7 FTE to be permanent. With changes to the timing of recruitment and opportunity to deliver

[Paper 24.83](#)

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some of our work better through shorter term secondments and appointments, than consultancy spend, we now forecast a peak at a maximum of 91.5 FTE for a comparable average of 81.6 FTE over the year, of which a maximum 80.7 FTE are permanent.

37. Defra provide 82% of our funding and DAERA 18%. Our headcount cap of 65 FTE is a comparable 80% of our average FTE of 81.6 FTE, but 71% of our maximum peak headcount of 91.5FTE. By implication, at peak we are relying on DAERA for 29% of our headcount (from 18% of our resourcing). Not recruiting creates delivery and underspend risk. To mitigate those risks, I therefore intend to tolerate this higher maximum peak headcount.

Spending review

38. It is now confirmed that the Government will undertake the spending review in two stages. The Chancellor will confirm departmental budgets for 2025/26 in the budget on 30 October, and a multi-year spending review will conclude by the spring. Northern Ireland's budget setting will follow a different timetable, which is likely to be close to year end as in prior years.

39. In the first stage in England, HM Treasury allocated indicative budgets to each department and required bids for any variance. We understand Defra's draft settlement to be challenging, and a cash reduction. We submitted evidence to Defra of the resources we need in England for next financial year (2025/26) within the required timetable in mid-August, following discussion with the Chair and ARAC Chair. Our request (at Annex D) is substantially on the same terms as the evidence we provided last year and seeks an uplift of £1.907m in England, and £0.288m in Northern Ireland.

40. A meeting to scrutinise the proposal within the bespoke process for setting our budget was held at the end of August. Our proposal appeared to be understood, and officials are said to have welcomed the level of evidence we are able to provide. The outcome remains uncertain.

41. We expect the second part of the spending review for 2026/27 onwards to commence soon after the budget on 30 October. The Government has signalled this spending review will be very challenging. We will continue to make the best case we can for the resources we need to deliver our mission as Parliament and the Assembly intended.

Strategy consultation

42. At time of writing, we have one response to our consultation, which closes on 26 September. We have held seven engagement sessions which in total have been attended by 47 stakeholder organisations. We have taken the opportunity to introduce our approach and changes to our current strategy. Questions have included in relation to our enforcement approach, in particular our responsiveness to and perceived barriers for complainants, our interactions with other bodies across the UK and Republic of Ireland and how we aim to be influential and have impact.

Engagement with government and Parliament

43. In line with the plan the Board agreed, we have written to each MP in England and Northern Ireland introducing our role and priorities. To date five individual MPs have sought further engagement. We have also written to the newly elected chairs of the Environmental Audit Committee (Toby Perkins MP, Labour), Environment, Food and Rural Affairs Committee

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(Alistair Carmichael MP, LibDem), Housing, Communities and Local Government Committee (Florence Eshalomi MP, Labour), and Energy Security and Net Zero Committee (Bill Esterson MP, Labour). An example of our introductory communication in England is at Annex E.

44. We have continued to seek to build relations with Parliamentary staff. Over the summer we have hosted secondments to the OEP from environmental researchers from the House of Commons Library, a committee specialist from the Environmental Audit Committee, and the clerk of that committee will have spent time with our teams in Worcester before the Board meets. These have provided opportunity to build relations, and to bolster both confidence in and understanding of the OEP from those who advise politicians on environmental issues.

IT contract variation

45. The Board has previously approved extension of the contract with Boxxe, our principal supplier of end-user computing equipment, and in April 2024 to vary the total contract sum to £2,441k over its four-year term – the known costs of the contract at that stage. The Board agreed that I could vary the contract by a further £80k to account for changes in cost that were then not knowable.

46. Following that, I approved the increase of the contract value by £57k for a variety of items: laptops and mobiles; software licences for the Intelligence Management System (IMS); increased end user support costs in line with headcount growth; and hardware accessories.

47. A further contract variation for £37k is now required. It is for Wildwood IT management; IMS phase 2 (which is being scoped in full, and will be subject to my separate approval) and IT consumables. This addition would exceed the current delegation by £14k. We therefore recommend Board approve to delegate to me the authority to vary the contract by up to a further £20k above the amount the Board previously agreed.

48. These costs are within the financial forecast and are subject to change control through our normal methods. Work is underway to procure our End User Computing IT well in advance of current contract expiry in September 2025.

49. We are reprocurring other enabling systems including: HR & payroll system, where we have identified a different preferred supplier, and are preparing delivery plans (including communications plans with staff) to ensure the changed system and supplier are ready to process the December 2024 payroll, and our website contract where we are currently assessing the most appropriate framework - the current contract expires April 2025.

Impact Assessments

Risk Assessment

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

Equality Analysis

51. No material equality implications have been identified in this paper.

Environmental Analysis

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52. 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)• publication would reveal information subject to legal professional privilege (s.42)• publication would harm the OEP's commercial interests (s.43)

ANNEXES LIST

This section has been redacted as it contains information available elsewhere.

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Annex E – An introduction to the OEP for MPs