

Dame Glenys Stacey: Aldersgate Group Speech

It is my pleasure to speak with you today, as the Chair-designate of the Office for Environmental Protection.

I know that many of you have been champions for OEP as a concept and now, increasingly, as a real prospect. Thank you. OEP has its origins in Brexit and comes about at a pivotal time in our relationship with the environment. Powers and responsibilities are now repatriated to the UK from Europe; our government is to host significant international conferences on the environment this year; and we have relatively new environmental commitments – net-zero by 2050, and an ambitious 25 Year Environment Plan. We have ever more pressing environmental issues, and now the suggestion (by the NAO and others) that already, government is slipping behind, and could and should do more to meet its aspirations and ambitions for our environment.

Our role

We also have the Environment Bill, likely to receive Royal Assent later this year. You will know that OEP is a central tenet of the Bill. By way of reminder, the Bill provides for two broad areas of responsibility for OEP:

Firstly, we will have a range of scrutiny and advice functions including independent monitoring and reporting on government's progress in the implementation of its environmental improvement plans and targets (specifically, statutory targets yet to be set). These functions also include monitoring and reporting on the implementation of environmental law more generally.

Secondly, OEP is to respond to complaints and other sources of information to determine if there are serious infringements of environmental law by government or other public authorities, including local authorities. We can undertake enforcement action. Often of course, change is brought about more quickly and effectively without the need for formal enforcement proceedings, but they will inevitably be necessary on occasions.

A word about public authorities: under law, this will include any other type of body while it is carrying out a public function – water companies for example, in relation to some of their routine activities specified in legislation.

OEP will have a broad remit. The trick will be to recruit the best people, to apply our resource intelligently across our functions, and use our hard and soft powers skilfully, all with the aim of making the best possible difference; to help government keep on track to meet its laudable ambitions and real commitments to the environment; and to hold it to account where progress or ambition are lacking.

Progress

You will know that the Bill is carried over to the next Parliament, and still needs to be steered safely onto the statute book.

However, every cloud has a silver lining. I am delighted that The Secretary of State has decided to establish OEP as an interim body with effect from 1 July this year, and we are making good progress. The initial shape of the organisation is settled, with the need for independence and for flexibility guiding the design. Our head office location, Worcester, has been confirmed. Board member recruitment is very advanced, and the first wave of externally advertised staff recruitment is about to commence.

We are bringing OEP to life. But I want now to describe how I see this precious child.

This will be a cerebral organisation - a thinking, intelligent and expert body. It will never be a big organisation— certainly not in comparison to bodies with practical delivery functions such as the Environment Agency and Natural England. But we can be approachable, flexible, and adaptable - encouraging others to work with us on specific projects or for fixed periods of time for example, so that both parties benefit from that experience.

We will need to punch above our weight, in this and other ways. And of course, we will want to listen, listen to folk such as yourselves about what works and what doesn't when regulation and the wider law is applied to environmental matters – and in that regard, thank you for your March report, *Fostering Prosperity*, so helpful.

OEP cannot formally commence its statutory functions until after the Environment Bill receives Royal Assent, likely to be towards the end of this year. But ahead of vesting and with its Board appointed and in place by 1 July, interim OEP can and will get on with much of the hard thinking – on our strategy and priorities, on our approach to enforcement, on how we can best act intelligently and skilfully as an organisation, and on the culture and values we will need to nurture, to work as we intend and make the difference we intend, over time.

We will be able to give advice to government in a non-statutory capacity – expressing a view for example in response to relevant consultations. And as an interim body, we are planning to produce a non-statutory report on government's progress with its 25-year plan, before the year end. This will avoid a reporting gap – you will remember the Natural Capital Committee previously carried out this role. We will also want to make progress on the data and framework needed to enable us to develop, over time, an integrated approach to reporting. I have commissioned work on this already.

As an interim body we will be able to receive (but not investigate) complaints about alleged breaches of environmental law. This is much as the Defra secretariat does now, under my direction. While this will not involve taking any formal enforcement action, we will be evaluating complaints that come to us and we may also speak with the relevant public authorities. So, we begin to take our first steps, on enforcement.

Strategic priorities

OEP and its forbear, Interim OEP do not exist yet. But it is already clear to me that our Board will be central to the organisation, rather than being one step removed as in some models. Our Board will own our strategy, and it would be wrong for me to usurp the Board and circumvent the necessary thinking and engagement, that will get us to the best place. But of course, I have some early thoughts about it.

It is particularly important to me that OEP is an open and transparent organisation. Our strategy document will be as forthcoming as possible, bearing in mind that we will inevitably be in the early stages of our development.

I have no doubt our thinking will accrue and mature over time. We must be willing and ready to make changes at any time should we need to. And here, being a listening organisation will help. Correcting one's course if needs be, this is one of the many valuable things to come from truly listening. Without wishing to disappoint, I should say now that I expect our first strategy document may not be that definitive – as we will want room to learn from experience, as we go on.

That said, our first strategy document will outline broadly how we intend to use our range of functions and powers to make the best possible difference. And I see already that the key for us will be selecting the right approach to use in relation to those issues we alight upon. The environmental issues are clear enough already, but the breadth of them means we will need to be selective and focus on where we can make the most difference, and then use our gamut of powers to suit the issue.

I want OEP to be a sufficiently forward-looking organisation, not looking solely at the issues of today, or yesterday. The ethos behind OEP will be to ensure that the environment is healthy and thriving for the future. The best oversight bodies manage to combine clear sight with hindsight *and foresight*. We will aim to do the same, but we need to work out how we do that.

In time, an integrated approach to reporting will go some way to focusing our vision, but I am aware already that others can help us with foresight as well, and that we will need to foster, and to nurture the right relationships and networks to support that. I look forward to that.

One more thing: our strategy will go on to outline our proposed approach to enforcement – for example, how we will determine whether failures to comply with environmental law are serious and could therefore be followed up, and how we intend to prioritise cases should we need to. I rather suspect that in one sense, this will be the more straightforward part of the job – but don't hold me to that.

Advising government

You have asked me to shed light on OEP's role in advising government to improve environmental law and meet the legally binding targets that will be set under the Environment Bill. I hope that, over time, we will be able to point to successes here. Time will tell, but the potential is great. In general, the more expert, considered, wise and sure-footed we are, and the more we can offer well thought-through and practical solutions, the more we are likely to influence.

What I can say now is that we will aim for evidence-based scrutiny reports and provide advice that is as well-balanced and comprehensive as possible – as in this way, we are likely to be more influential. I will be expecting our Board to adopt an issues-based approach – as I have said, for each pertinent issue we will consider the best way or ways in which we can make the necessary difference. We won't hesitate to enforce where necessary, but we should view change for the better, rather than the number of enforcement cases, as a measure of success.

There are several ways in which we could potentially influence government of course – through our annual reporting on progress against the 25 YEP and the legally binding targets for example, or through a thematic approach to monitoring and reporting that may be particularly useful when it comes to one element or another of environmental law.

We could also find ourselves joining forces with others such as the Climate Change Committee or our counterparts across the UK on occasions – as coalitions across and between respected bodies can be particularly effective. Or we can influence by responding to consultations, and by more general public comment and the judicious use of our power of voice.

There are harder edged tools - issuing proceedings or inviting ministers to join proceedings, for example. And then there are the quieter, less pugnacious influencing techniques that are so often worthwhile – one-to-one conversations for example and offering tenable solutions and ways forward. The skill will be in choosing what and when to influence, and then using the right tools from the toolkit. But yes, an important expectation of OEP is that we will exert influence, to good effect.

We speak of influencing government, but of course our reach extends to other public authorities, and I suspect our influence here could be just as consequential.

Enforcement – the detail

I would now like to move on to OEP's enforcement function.

I don't need to tell members of the Aldersgate group that proper implementation and enforcement of effective environmental law is vital. Your own recent report makes the case that well-designed and properly enforced environmental regulations have delivered wide environmental and economic benefits in the past and will be essential to support the UK's economic recovery efforts and meet climate and environmental targets. This is important not just to protect and improve the environment, but also to support a competitive and environmentally sustainable economy.

So, how might the enforcement of environmental law differ once OEP is fully set up?

Once vested, OEP has acquired will be able to consult and to agree its enforcement policy including its approaches to determining the seriousness of any complaint and its approach to prioritisation.

It will apply these approaches to the complaints that were received by interim OEP and all new complaints, alongside any issues identified from its own findings from

monitoring the implementation of environmental law. This will allow OEP to determine which matters to formally investigate.

Where it does choose to investigate complaints, OEP will be able to rely on the statutory provisions of the Bill, including the duty of cooperation for public authorities and OEP's power to serve information and decision notices.

Following its investigations, OEP will produce reports and recommendations for the public authorities in question, and for government.

And, of course, in appropriate cases, OEP will be able to take cases to court in the form of an environmental review. Our legal framework will allow OEP to bring legal proceedings outside the normal judicial review timescales, ensuring OEP has time to resolve issues through its information and decision notices, rather than rushing into legal action.

In cases where there is an urgent threat of serious damage to the environment or human health, OEP will be able to apply directly for judicial review without going through its earlier notice processes.

Our enforcement provisions are designed to bring about solutions, if possible, without ending up in court. This may not be enforcement in the traditional sense. It may instead be influence, or exposure, or a request to join others' proceedings, or whatever we judge is the best way to use our powers and position to make the best difference.

Regulators such as the Environment Agency and Natural England will still have their own responsibilities and enforcement functions of course. One of our early jobs may well be to map out those enforcement responsibilities – as we will want to be certain where responsibilities lie.

However, there will be some procedural differences. One is that, once OEP is vested, other public authorities will need to cooperate with any investigations carried out by OEP.

A further point of significant difference against recent procedural practices is that, under the EU infraction process, the European Commission could only act against the national government for a failure by a public authority to comply with EU law. In contrast, OEP will be able to take action against the specific public authority in question, while also seeking to involve Ministers in appropriate cases. Public authorities will therefore need to be able to represent their own implementation of environmental law in discussion with OEP, rather than being insulated in the EU infraction process where the Commission could only engage with the UK government.

Working with others

Our relationship with public authorities will not just be to enforce against them, but to work with them.

There will be Memoranda of Understanding, to guide these relationships. One obvious area that springs to mind is ensuring that we are each clear and realistic about the environmental data to be provided to OEP, to monitor government's progress with the 25YEP.

It will be important that OEP enjoys constructive, cooperative, and purposeful relationships with the Environment Agency, Natural England and other public bodies. OEP must also understand and appreciate the strengths of the organisations it works alongside and holds to account, but also their weaknesses. We must understand the pressures these organisations are under but not find ourselves too empathetic to those pressures, as that way lies capture, and with it the risk of failure.

As for bodies such as the CCC, as I have already touched upon, we may join forces to better effect change. OEP must be grounded in its own territory, its own remit, rather than straying beyond, but a close working relationship with the Climate Change Committee will be key, so that each important aspect of the effort to tackle the climate emergency is led by the organisation best placed to deal with it.

Wider stakeholders

Although OEP must be independent, it must not be detached, or remote. From day one, we must not just engage, but really listen. In my view we will be most effective if we form strong relationships not just with those we hold to account, but also wider stakeholders.

By working with stakeholders, we will be able to get early oversight of the key issues facing our environment, so that OEP can really hit the ground running.

For example, the Aldersgate Group's latest report has been invaluable in flagging areas where regulation is not doing enough to deliver a sustainable economy, and the possible measures that could be taken to combat this. Understanding these issues early on and forging positive working relationships to delve into these issues in more detail will be crucial in enabling OEP to prioritise key environmental issues.

I want to hear what you think is or is not working well, and why it isn't working. What it is that you think needs to change. I hope we can share expertise and work together to build a comprehensive picture of how we can improve environmental regulation, ensure compliance, and enable government to achieve its environmental ambitions.

Conclusion

To conclude, there is no doubt about the severity of the threats we now face. Climate change, the degradation of our soils and air quality, and the widespread loss of biodiversity, alongside the spiralling effect of resource consumption and waste generation. These issues really do threaten not only our environment but also economic prosperity, our wellbeing, our health.

The Dasgupta Review highlighted the financial importance of protecting nature, and the implications if we do not. Now is the time to recognise the environment as a real asset - part of the balance sheet of the country. We cannot just stop further degradation of our environment, but we must also seek to improve it – this is the *raison d'être* of OEP, enshrined in its principal objective.

Well enforced and effective environmental regulations will help to provide the stability and certainty that businesses require to plan and have the confidence to innovate and invest for the longer term. This includes the green economy but also wider sectors that need to take account of environmental legislation and objectives.

OEP has an important part to play. I will do everything within my power to ensure that OEP sets its ambitions and goals at the highest level and does everything in its power to deliver those ambitions, on behalf of current and future generations.

Thank you all very much for listening, and I very much look forward to working with you all in the future.

Dame Glenys Stacey

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