

# SCOTTISH ENVIRONMENT PROTECTION AGENCY

## STRATEGY MEETING

The fortieth Board Strategy meeting took place at 1.00pm on  
Tuesday 30 June 2020 via FaceTime

### Present:

Terry A'Hearn	Craig Hume
Bob Downes (Chair)	Julie Hutchison
Fran van Dijk	Harpreet Kohli
Michelle Francis	Nick Martin
Nicola Gordon	Philip Matthews

### In Attendance:

Ian Buchanan	Chief Officer Compliance and Beyond
Kieron Gallagher	Head of Governance
Jo Green	Chief Officer, Performance and Innovation
Martin Grey	Head of Communications & Marketing (items 1-11)
John Kenny	Chief Officer, Circular Economy
Bridget Marshall	Regulatory Strategy and Government Relations Manager (item 9)
Stuart McGregor	Chief Officer, Finance
Jennifer McWhirter	Clerk to the Board
David Morgan	Sustainable Procurement Manager (item 12)
David Pirie	Executive Director Evidence and Flooding
Anne Turner	Business Strategy Unit Manager
Jen Shearer	Head of Function (Enforcement) (item 11)
Kari Speirs	Corporate Officer
Jo Zwitserlood	Head of Function (Materials) (item 13)

### 1. Board Discussion - Black Lives Matter

The Board thanked Harpreet Kohli for leading the discussion.

### 2. Chair's Opening Remarks

The Chair welcomed everyone to the meeting. He advised that Anne Turner was acting as the Facetime moderator. If anyone drops out of the FaceTime call she will add you back on. He confirmed that we are moving to MS teams in July 2020. The Chair welcomed Kieron Gallagher and Martin Grey to the meeting. He welcomed Kari Speirs to her first Board meeting as Corporate Officer.

The Clerk to the Board highlighted that the Board had approved the suspension of paragraph's 8, 31 and 32 of the Standing Orders on 28 April 2020 and agreed that the decision would be subject to review at every other Board meeting, so at least every two months.

It is proposed that the suspension continues at this time but that the position is reviewed again next month at the Agency Board meeting on 28 July 2020 to agree the position for the next Agency Board meeting on 29 September 2020.

The Board **approved** this proposal.

The Chair asked the Chair of the Audit Committee if there were any issues arising from the mornings Audit Committee meeting that the Board should be aware of. He advised that he will ask this as a precursor, as appropriate, going forward.

The Chair of Audit Committee, Nick Martin, advised that the annual accounts had been a relatively smooth process despite COVID-19, that internal audit will resume in August 2020 with a lesser programme, that there is concern around income arising from Scottish Government asking us to defer the issuing of invoices for a month – any shortfall will not be apparent until later in the year so our ability to respond is restricted. He concluded by highlighting the looming financial hole in the NHS going forward and the fact that we will be further down the priorities.

### **3. Apologies for absence**

Apologies were noted from Martin Hill.

### **4. Order of Business**

The order of business as outlined on the agenda has been modified in that items 13 and 14 have been swapped and the Board members only private session has been moved to the end of agenda due to the logistics of FaceTime.

Michelle Francis, Deputy Chair, will Chair the meeting from item 13 (swapped) onwards.

No other AOB was raised.

### **5. Declarations of Interests**

No declaration of interests were made.

### **6. Approval of the minutes of meeting held on 24 March 2020**

The minutes of the meeting held on 24 March 2020 were **approved** subject to minor amendment as an accurate record of that meeting.

The Board highlighted the passage of time between Strategy Board meetings and asked that the Minute be circulated the month following the meeting.

**Action: Clerk to the Board**

### **7. Matters Arising**

The Clerk to the Board provided an update. She advised

Action 108 - This was discussed at the May Agency Board meeting. This action is proposed closed.

Action 109 – The Chief Executive confirmed that this information would be circulated regularly. It was **agreed** that the AMT lead should be changed to the Chief Executive. This action is ongoing.

Action 110 – The Chief Executive confirmed that this information would be circulated regularly. It was **agreed** that the AMT lead should be changed to the Chief Executive. This action is ongoing.

Action 111 – The Chief Executive advised that himself and the Chair have regular meetings with other Chief Executives and Chairs and does not propose that there is a need to meet with Boards but that he will come back to the Board if it is required. This action is proposed closed.

Action 112 - An assessment of PPE needs has been undertaken and PPE is being sent out to those that need it. This action is proposed closed.

Action 113 - This was circulated to the Board by email on 30 March 2020. This action is proposed closed.

Action 114 - 15 minutes has been added to the start of each Board meeting agenda, commencing in

May 2020 to allow more social discussion. This action is proposed closed.

Action 115 - The revised AOP was approved at the Agency Board on 28 April 2020. This action is proposed closed.

Action 116 - A Special Board meeting took place on 1 April 2020. Statements have been published on the internet. This action is proposed closed.

Action 117 - A progress update will be presented at the Agency Board meeting on 28 July 2020. This action is ongoing.

Action 118 - (proposal to incorporate action 100 into this action) As part of understanding the implementation of the 20/21 AOP, a Board session on net zero will be scheduled at an appropriate time. This action is ongoing.

Action 119 - A verbal update was given at the Agency Board on 26 May 2020. This action is proposed closed.

The Board asked that a further update be provided at an upcoming Board meeting in respect of Action 119 and that it therefore be left open.

## **8. Board Engagement Activity**

Philip Matthews advised that he is involved in nuclear decommissioning work outwith SEPA that links into action 118. He asked where SEPA is in terms of its net zero work. Fiona Martin responded, advising that the operational lead for the net zero work is also heavily involved in the organisational recovery and emergency response arrangements so it has been deprioritised at the moment. In response to a concern that we are not making the same progress as other organisations, it was **agreed** that we should show how we are progressing.

**Action: Fiona Martin**

**The Board noted the update.**

### **8.1 Board Buddy Register**

The Clerk to the Board advised that three documents had been circulated in advance of the meeting, the Board Buddy Register, the draft Terms of Reference and a summary of the background and proposed process going forward.

The Board discussed the need to have more structure to the process and commented positively on the length of the Terms of Reference.

In response to a question about retrofitting existing projects the Clerk to the Board confirmed that this would be done and that they would be added to Diligent Boards for information and awareness.

**Action: Clerk to the Board**

The Board asked that more reflection be given to the skills and experience required as well as the existing workload of Board members when allocating Board Buddy tasks going forward. The Board **agreed** that rather than just volunteer at a meeting, individuals should contact the Chair and Clerk to the Board after the meeting if having reflected they would like to volunteer. The Chair will provide oversight and make the decision about who is involved based on what is required.

In response to a question about the number of Board members allocated to each Board Buddy project the Board **agreed** that members should feel able to join or leave a project based on their ability to contribute or due to their balance of commitments.

**The Board noted the update.**

## **9. Update on Brexit Developments**

Jo Green introduced the item with Bridget Marshall in attendance. She highlighted that the UK Government have confirmed that they are not seeking an extension, that there is a lack of clarity on the Northern Ireland protocol and that there is an increased risk of a no deal or low deal. She reminded the Board that this is our fourth round of preparation in respect of Brexit and that our aim is to ensure that we deliver our statutory purpose during the departure from the EU. Jo Green advised the Board that the arrangements we had made previously to prepare to respond to disruption had been used for COVID-19 and that we would update the existing workstreams we focused on before, including those around Business Continuity, Resilience, Communications and Green Recovery. She highlighted the disruption the economic downturn had on supply chains and the business impacts on partners. Legislation also impacts on SEPA. Jo Green advised that we are very mindful we may be dealing with concurrent issues: COVID-19 and Brexit and that it was difficult to understand the impact and resource implications due to the uncertainty however it was likely we would be in a similar position to that we were in during March/April 2020. She concluded by highlighting that the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill 2018 has just been published.

Bridget Marshall provided a legislative update highlighting that as well as the main legislation there are also a large number of Statutory Instruments including seven essential and twelve critical UK Statutory Instruments, and five critical Scottish Statutory Instruments – a lot to get through by the transition date. She advised that SEPA is undertaking a lot of work supporting Scottish Government.

The Chair provided an update on the recent Board Buddy meeting where it was discussed that Jo Green and Bridget Marshall would circulate any risks arising as they received more information, particularly in respect of: legislation not going through; pressure on the Agency Management Team; and around the new environmental standards body.

The Board **agreed** that updates would continue to come to the Board.

**The Board noted the update.**

## **10. Business Planning Updates (STRAT 06/20)**

The Chief Executive introduced the item and highlighted: the strong Senior Leadership Team (SLT) built up over the last few years; the huge change agenda (including the 13 change projects) ; the increased pressure resulting from the COVID-19 pandemic; the collective capacity of SLT being put to best use; the implementation of the Annual Operating Plan (AOP) and the measures arising from it; the new group chaired by Fiona Wylie supporting AMT in respect of service reviews, financial savings and workforce planning and the progress to be made in 2020/2021 – drawing the Boards attention to the time allocated to Corporate Plan discussions (section 3.4.8).

The Board noted that it was a comprehensive paper, highlighted the opportunity to focus on phase 2 project delivery within Learning & Development and commented on the inclusion of KPI's while requesting further information on measures and the difference we will make.

In response to a question about the fact that there are only four projects within the large area of Flooding, the Chief Executive advised that Vincent Fitzsimons the SLT member of the team is in the middle of a re-organisation, which will result in significantly more capacity. He confirmed that it is about culture not just structure and that the Union are happy. David Pirie advised that the work being undertaken is going really well, that there is a new skills-based model and less silo working. He highlighted that the four projects are big and ambitious, particularly the Flood Risk Management Strategies where we are struggling to interact with partners due to the challenges around COVID-19. He advised that Flooding makes up roughly 13% of SEPA.

The Board expressed disappointment that the AMT has been discussing supporting managers for a year and that we intend to discuss it for another year when we know that there is enthusiasm across the organisation for change and that people are keen to move towards phase 2 working but that managers need support for this to happen. The Board also raised a potential staff wellbeing issue in expecting staff to behave differently without coaching and support and commented that the inclusive

approach here has been too prolonged. This is a tool that can accelerate delivery of everything else. In response John Kenny confirmed that work is being done in tandem, the value in self-awareness of managers is increasing but there is an external element that will take time. However, it does not mean that things are not happening. The Chief Executive advised that time was spent on looking at what a manager is, that a lot of activity will be done and that a further update will be provided and discussed at the Change Committee meeting next week.

In response to a question about language, how what is being achieved against the AOP will be measured and about incorporating the benefits arising from the changes to procurement, the Chief Executive highlighted that it would not be a priority setting plan if we included everything we do, that there is capacity to build relationships and capture the benefits from these and that as well as specific measures there will be flexibility to enable examples that add value to be presented to the Board.

In response to a question about gains from new technology and how we can look at workforce and financial planning without being specific about gains, the Chief Executive advised that system change across portfolios has been a struggle but that that FTE, budget and gains are being looked at, at the start of projects and being built into the change process. Ian Buchanan highlighted cultural observations around how we undertake work including the different perspectives of staff who have not delivered significant change before. He advised that Vanguard, external support is being used. Our approach involves thinking about the systems of enforcement, what we are trying to deliver and how to measure to see if we are successful while also driving change to get benefits. This will help staff and managers move from a site by site to a more strategic approach.

The Chair highlighted that work will be done with the Change Committee with a further substantive update coming back to the Board in September/October 2020.

**Action: Chief Executive/Clerk to the Board**

**The Board noted the update**

**The Board had a five-minute break**

## **11. Enforcement Update (STRAT 07/20)**

Ian Buchanan introduced the item with Jen Shearer in attendance. He highlighted that this follows on from the previous update and will provide more detail on where we are now.

Jen Shearer confirmed that the Enforcement Function has been in place since October 2019 and has made good progress including around having to adapt to COVID-19 which brought benefits that have been built in as well as delays. She drew the Board's attention to what the function is looking to achieve – setting up the team, developing staff and undertaking enforcement work. There has been a significant amount of training so that staff have the same knowledge base to ensure consistency in approach. She described the illegal activity matrix tool, highlighting that it is bringing data together so that all illegal activity can be categorised so that the scale and character of the activity is clear, allowing themes to be drawn out and considered, in a route cause way to then track progress and measure success. Jen Shearer advised that while there is still work to be done to progress Variable Monetary Penalties (VMPs), highlighting that a consultation was due to take place in March – July 2020 and will now be in late summer, there has been a lot of work that has been undertaken on training, guidance and governance. This includes enforcement improvement work that has had the opportunity to progress due to COVID-19 resulting in staff not being in the field.

She highlighted the enforcement review that had been undertaken in response to COVID-19 to ensure that any action taken was appropriate, proportionate and consistent across the country. She described briefings as an example of a product that gives oversight of what is going on, where intelligence is presented in an easy to read format and highlighted the recent social media waste collectors campaign. Fly tipping and the burning of waste are both fast moving, but intelligence was gathered quickly, allowing contact to be made with individuals to check their legitimacy and offer advice and assistance where appropriate which resulted in licence applications that individuals did not know were required.

In response to a question about how we show how much unacceptable activity there is and how much action we take, Jen Shearer advised that the recently circulated misclassification update in relation to a study in England could be used pro-rata to give an indicative figure. The social media campaigns should help articulate this and the matrix tool will also help. We need a baseline of problems to be able to know how big it is and where to focus resource, after ranking and prioritising issues. She highlighted that during COVID -19 support was provided to regulatory teams dealing with more significant sites including odour issues, by helping to obtain statements over the phone for example. A regulatory tactical menu has been built with a suite of options for staff to use rather than the traditional site visit. The focus now is on what we are trying to achieve and how this can be achieved using for example video calls, drones and time stamped evidence. This has particular benefits around reducing the resource and cost implications of visiting rural site.,

Jen Shearer concluded the presentation by highlighting the areas in the enforcement plan, confirming that all the work she had spoken about fitted into these three main outcomes: Enforcement is used strategically; enforcement action is quick; and enforcement action is effective. The aim is to deter behaviours in a legally robust way. The Enforcement Function will continue to pick out themes and issues from the database and attack them in a strategic way and continue to react with partners, such as Police Scotland, HMRC and Trading Standards on bigger issues.

In response to a question about how many FMP's there are, whether they are effective and if the powers we have are proportionate and relevant to the current level of harm, Ian Buchanan advised that there have been dozens since 2016, they are on the website. He advised that we have the powers we need and that their effectiveness depends on how we use them. For a lot of offences it is about the threat of being caught. Fixed Monetary Penalties (FMPs) are successful but more so when they are used as part of a package and we publicise them.

In response to a question about the content of the VMP consultation, Jen Shearer advised that the original formula in the guidance was very specific and that given the passage of time and what has been learnt the view is that the formula should be amended to be less specific therefore it was felt that consulting again was fair. Those who responded last time will be targeted as will the Law Society of Scotland.

In response to a question about auditing in respect of the social media campaign work and the low price of a licence, Jen Shearer advised that searching social media is part of business as usual. If we do not get a response to our notifications the business is moved up the agenda and we start to consider options such as FMP's. It is less than £200 for a 3-year waste carrier's licence but duty of care and misclassification of waste are also relevant so we can use a range of intelligence. The fee covers our costs. John Kenny advised that there is the potential under the Integrated Authorisation Framework to have more robust barriers such as a fit and proper persons assessment.

In response to a question about where the recovery rate is paid, Ian Buchanan confirmed that the Scottish Consolidated Fund collects the revenue and distributes it across Scotland for the good of communities.

The Board commented that the progress that has been made is great but that we now have to develop measures to show that the action we are taking is effective. The Board highlighted that consideration should be given as to whether the action we can take is proportionate to the now more sophisticated crimes.

**The Board noted the report**

## **12. Procurement Operating Plan 2019-21 Progress Report (STRAT 04/20)**

Stuart McGregor introduced the item with David Morgan in attendance, highlighting that Board Buddy involvement has been valuable and that the paper reflects the contributions made.

David Morgan highlighted that smarter procurement is freeing up time to focus on better contract management and the achievement of strategic aims. He advised that there are examples of where this is starting to work, where practice is changing and commercial thinking increasing. He confirmed that the COVID-19 impact has not been as big for SEPA as it has been for other NDPB's and that we are still confident that we will achieve our objectives.

The Board Buddies confirmed that the questions being posed in the paper are critical, that judgment calls are required around the balancing act and that the case studies show the positive direction of travel.

In response to a question around whether scoring reflects what is important to us, with reference made to the Perth model – Community Wealth Building work, David Morgan advised that local spend is always a challenge, it will be softened following our exit from the EU but there is still a balancing act between suppliers reflecting our values and Value for Money. He confirmed that any introductions the Board could make for example with Local Authorities would be welcome.

In a related question around the Business Pledge and requiring certification, David Morgan highlighted that care needs to be taken around entry to public procurement giving an example of having to accept equivalents to standards and accreditations. Certification at product level is easier. He provided details about the differences between selection criteria and award criteria in public procurement highlighting that selection is a pass/fail whereas award criteria is scored. Relevance and proportionality is core to procurement legislation and governs how we purchase, having reference to our statutory purposes is not sufficient for the legal threshold as demonstrated by case law. It is a risk that we could take, balanced with other risk including for example reputational risks.

The Board commented that there is anecdotal evidence that individuals work harder if their values are aligned, recognised that relationships with suppliers are hard to measure and noted that there is an opportunity around taking a risk.

David Morgan drew the Board's attention to the questions within the first bullet point at section 4.1, highlighting that internal service deliver requires a change in skill set from contract management to people management. In response to a question about the Water Environment Fund in respect of increasing contract management skills and multi-year spend, David Morgan advised that he has been working closely with the team over the last few months, considering the difference risks associated with both internal and external delivery. He highlighted that it is an example of progress around commercial maturity. Similar work is being done with SEPA IS.

David Morgan asked the Board for a view on the questions within the fourth bullet point of section 4.1, and whether the November 2019 request for a savings target was still the right approach given the wider outcomes being looked at. The Board queried why it was not possible to have both the target and wider values and highlighted that sustainability should not be seen as an expensive extra but built into procurement to show the value added. David Morgan advised that commercial outcomes around better terms and relationships might not get a saving. He confirmed that he is part of the procurement plus network and represents NDPB's on the procurement and climate change forum.

The Chair commented that great progress had been made and that it was great to see the innovation and creativity being applied.

**The Board noted the report.**

**As highlighted at the start of the meeting the order of items 13 - Deposit Return Scheme and 14 - Agency Board Change Committee as stated on the agenda were swapped.**

#### **14. Agency Board Change Committee update (Verbal)**

Michelle Francis, as Chair of the Change Committee advised that a meeting had taken place on 4 June 2020. There had been a private session with the Chief Executive, highlighting the challenges and plans, updates on which are contained in the paper for item 10. An update on the Change Plan was provided and the Committee prioritised five key themes to focus on: 1) Learning and Development planning - John Kenny is attending the next meeting on 8 July 2020 to give an update; 2) Clearly defined outcomes to measure -a Change paper with updates on the 13 change projects is on the agenda for the next meeting; 3) How delegations in the AOP will work - this is not on the agenda for the next meeting; 4) Coming out of lockdown and what it means for change -will be discussed at the meeting following the July 2020 meeting; and 5) Staff morale and culture, a short update is being provided at the 8 July meeting with a fuller update coming to the Agency Board meeting on 28 July 2020.

The Chair highlighted that it is rare for a formal group to be set up but that this had been done due to the importance of change for a phase 2 Environment Protection Agency. Michelle Francis will provide regular updates to ensure that the Board stays fully engaged.

The Board highlighted that they were happy to help if there are any questions or documents that would benefit from a wider view. The Chief Executive advised that it is beneficial to be able to talk in more depth and about the specifics of issues for example the Learning and Development work.

The Chair confirmed that the expertise and experience of Board members should be used where appropriate and advised that the results of the Board Effectiveness questionnaire and key themes arising from appraisals would feed in.

**The Board noted the update.**

**Michelle Francis took over the role of Chair.**

#### **13. Deposit Return Scheme (STRAT 05/20)**

John Kenny introduced the item with Jo Zwitserlood in attendance, highlighting that this topic has been to the Board a lot, the last time being in February 2020 and that there has been a lot of help and input from Board Buddies.

Jo Zwitserlood confirmed that following the decisions on 18 February 2020, progress was being made and then COVID-19 hit, which had a significant impact: on us internally including around the availability of staff for workstreams and delivery; on business, economically; and on those we regulate as well as on the appointment of a scheme administrator. She advised that there have been further developments since the paper was written, which reflects the pace of change. The biggest workstream impact was in respect of the critical IT development including the recruitment of technical skills, where progress needs to be made by September 2020. She highlighted the updates from the Programme Board on 19 June 2020 as being: 1) the discovery exercise – the user research for the IT system design including meetings being arranged to gain feedback from industry were cancelled due to sensitivities arising from COVID-19 however following conversations with partners, engagement is re-starting and the work is planned to be finished by August 2020; 2) the engagement with the scheme administrator – applications are due to be submitted to Scottish Government in August for appointment in September 2020. It has been agreed that we can discuss the discovery exercise in advance of appointment with anyone interested in applying; and 3) the recruitment of the core development and agile team – who were previously collocated in the same office. Work has been undertaken with SEPA Procurement to identify the skills in the market. We have £800k funding from Scottish Government for IT system development which we are confident we can spend by bringing the fixed element of the IT workstream forward.

In response to a question about the need for an accountable senior person in SEPA who can escalate as appropriate if for example specifications change, Jo Zwitserlood confirmed that John Kenny is the Project Control Board lead and the overall Senior Responsible Officer for the project with David Pirie being responsible for the IT build element.

In response to a question about risk identification and assessment, Jo Zwitserlood confirmed that there is a risk and issues log at the Project Control Board level and also at an IT level. David Pirie advised that the risk is as articulated - that we do not know that the SEPA IT system will fit with the scheme administrator system as the scheme administrator will not be appointed until September 2020. If we cannot build the system to be ready for January 2022 we would need to consider building a simpler system that would not follow the Scottish Government agile and reusable approach or necessarily be compatible with future technology but would be enough to facilitate producer responsibility. In response to a question about why we were developing a new unique system when there are other Deposit Return Schemes in operation elsewhere in the world, John Kenny advised that it will help us with our wider digital work.

The Board **agreed** that management should make decisions and keep the Board informed in respect of any risks. Regular updates should be provided through the Chief Executive's report.

### **The Board noted the report.**

#### **15. Action Note**

The Clerk to the Board provided an update on the Action Note and advised:

Action 85 – This is on agenda today, item 11. The action is proposed closed.

Action 86 – Both CAS and SPRI were published in the first quarter of the year. A C&B and Enforcement Report has not been published for 17/18 and it is not in the current circumstances being prioritised. The action is proposed closed.

Action 96 – This work was going to be undertaken in through March and April 2020 however it has only been now been possible to start the work with data sets being drawn together from environmental event and ongoing enforcement actions. This will be progressed through the next few months as the data sets are cleaned up and measures are developed as part of the enforcement reform work. This action is ongoing.

Action 98 – This was planned as a Seminar Session on 28 April 2020 but has been postponed until later in the year. This action is ongoing.

Action 99 – Following the finalisation of the Annual Operating Plan, an engagement plan is being developed to support board engagement. This will come to the Agency Board meeting on 28 July 2020. This action is ongoing.

Action 100 – There is a proposal to incorporate this action into Action 118. The action is proposed closed.

Action 102 – This is on agenda today, item 13. The action is proposed closed.

Action 104 – This will be added to the Board planner, for spring 2021 and then reviewed when appropriate nearer the time. This action is ongoing.

Action 105 – Both the mini actions within this action are ongoing.

Action 106 - International Services has been considering the balance sheet and indicators which would capture the wider benefits of international work. The International Services team had hoped to discuss this with Board Buddies. Following discussion at the Agency Board meeting in May 2020, it

was agreed that Board Buddies were not required for this area of work at this particular time, but the action will now be taken forward by the Team. The action is proposed closed.

Actions 85, 86, 100, 102,106, 108, 111, 112, 113, 114, 115 and 116 are now closed.

Actions 96, 98, 99, 104, 105, 109,110,117, 118 and 119 are ongoing.

**16. Any Other Business**

No other business was raised

**17. Date and time of next meeting**

The Board **noted** that the next meeting would take place on 27 October 2020 at 1.00pm.

**Board members only private session**

No items were raised.