

THE OFFICE OF RAIL AND ROAD

123RD BOARD MEETING

09:00-15:15, TUESDAY 23 FEBRUARY 2016

ONE KEMBLE STREET, LONDON, WC2B 4AN

Non-executive members: Stephen Glaister (Chair), Tracey Barlow, Bob Holland, Michael Luger, Justin McCracken,

Executive directors: Joanna Whittington (Chief Executive), Ian Prosser (Director Railway Safety), John Larkinson (Director Railway Markets and Economics), Alan Price (Director Railway Planning and Performance *to item 9*)

In attendance, all items: Peter Antolik (Director Highways), Tess Sanford (Board Secretary), Russell Grossman (Director Communications), Juliet Lazarus (Director Legal Services), Dan Brown (Director Strategy and Policy), Graham Richards (Deputy Director, RPP), Tom Taylor (Director Corporate Operations *to item 5*)

Other ORR staff in attendance are shown in the text.

Item 1 WELCOME AND APOLOGIES FOR ABSENCE

1. The chair welcomed everyone to the meeting. There were no apologies for absence, although Alan Price would be leaving the meeting at lunchtime for a meeting at DfT.
2. SG noted that this was Alan's last meeting before he left the civil service and thanked him for his valuable contribution over the three years of his service.

Item 2 DECLARATIONS OF INTEREST

3. Bob Holland's pre-existing interest on ECML applied and he would leave the meeting before that item was discussed.
4. Alan Price had been authorised to take up a role with Jacobs when he finished at ORR. There was no resulting conflict, but the interest was noted.

Item 3 APPROVAL OF PREVIOUS MINUTES

5. The minutes were approved subject to some minor corrections. The board noted that their minded-to decision on HAL was still out for consultation.

Item 4: MONTHLY HEADLINES

6. Ian Prosser reported on:
 - a. A prohibition of all West Coast Railway's operations pending improvements in governance and safety operations.
 - b. His emerging understanding of the crash in Bavaria and what lessons that might have for the UK.
 - c. NR's progress on repairing extreme weather impacts at Lamington viaduct, Leighton Buzzard, Dover/Folkestone and others, and implications for NR's asset assurance processes.

- d. The Secretary of State's permission had been received to enter into the agreement on safety by design
- e. RSD was taking forward collaboration with ERA on the fourth package.
- 7. Alan Price reported on:
 - a. Responses to DfT's consultation on the Hendy report.
 - b. Ongoing discussions with TOCs and NR around whether or not the end-CP5 targets for PPM were achievable (this was the subject of his meeting with the Minister later today).
 - c. Discussions with Crossrail to help them prepare for the authorisations processes that needed to precede operational running.
 - d. Work in hand to check that NR's plans for Easter engineering works were robust.
- 8. John Larkinson highlighted:
 - a. A major piece of work by a team across the office to deliver track access contracts for all freight operators. This was complex work drawing on our competition, freight and track access policies and should result in more flexible access rights and formalise the release of many unused freight paths.
 - b. A useful workshop with stakeholders on cost identification, and the structure and prioritisation of charges as part of PR18 development.
 - c. Resource pressures in the consumer team and across the organisation as a result of the supercomplaint and adjustments to planned work as a result. The board asked whether more use of external resources on the supercomplaint might have protected the planned work. John said his judgement was that as much use had been made of consultants as was consistent with good oversight and some of this temporary resource would be maintained after the supercomplaint response was complete, to recoup some of the ground on the planned work.
- 9. Joanna Whittington highlighted:
 - a. Her internal and external engagement, including a visit to Scotland where she had visited the DMU in Edinburgh and a meeting of the RDG where feedback following the meeting (which included SG) had been very positive.
 - b. The European team had published ORR's response to Eurotunnel's network statement, working in collaboration with ARAF – this was a good rehearsal for next year's iteration.
 - c. Headlines from the highways Q3 report, and that the team would be fully staffed by March.
 - d. Work by the communications team to engage staff in developing the narrative for ORR's work
 - e. NAO's positive endorsement on preparations for the annual financial audit
 - f. Corporate operations achievements: the 5 year rent review for OKS had been signed off with a 14% increase (still 17% below market rate for the area): planned improvements in IT resilience following the 2015 fire had been delivered.

Item 5 REGULAR REPORTS

10. The Board discussed monthly reports on rail safety and the NR CP5 Tracker, plus the Q3 report to DfT on Highways England (not for publication).
SAFETY
11. IP noted the first fatality of the year on a level crossing. The board discussed what was known about the Bavarian accident.
12. IP had some concerns about the growth in use of Mk1 steam rolling stock on the mainline for charter work. A workshop being held to support NR in developing rules for operating on the main line network so that the charters did not interfere with safe operation of the main line.
13. IP noted the increase in the safety risk model was the result of earthwork failures and that the level was likely to increase again. NR did not have a plan to introduce remote asset monitoring, although recent experience suggested this would be valuable. The Board discussed the choices being made by NR about where to spend available funds (eg enhancements vs maintenance/sustainability).
CP5 TRACKER

Graham Richards joined the meeting

14. The board noted some minor errors in the finance tables. The board discussed the balance between delay minutes caused by TOCs and those by NR; they were told that the evidence ran counter to NR's claims that most delay was the fault of the TOCs. The board felt that punctuality mattered to consumers and to the effective running of the network and PPM should not be abandoned as a measure. The performance of GTR was particularly noted. The board was told that NR had dropped funding of its traffic management system as a result of the Hendy review and that the incident management system, introduced as a result of ORR enforcement at London Bridge, was being rolled out across the country.
15. The board asked how NR planned to fund the digital railway, noting that this was part of the discussions around NR's business plan.
HIGHWAYS
16. The board discussed the Highways Monitor Q3 report to DfT, which was not for publication. PA reported that two traffic officers had been involved in an incident in Cumbria, one had been killed and the other severely injured. The board discussed the importance of HE understanding what impact their work had on levels of safety risk to road users if they were to achieve the targeted reduction in KSI's¹.

ITEM 6 ORR BUSINESS PLAN 2016-17 AND WIDER COMMUNICATIONS APPROACH

17. Russell Grossman presented the paper. The supercomplaint response, the PR18 consultation document and our own business plan were the three publications to be promoted in the next period. Key messages would be

¹ Numbers of killed and seriously injured

identified that were common across the three and the business plan in particular would provide source material for other communications during the year.

18. RG offered board members social media coaching to enable them to take advantage of these powerful, effective and cheap tools for communications. This offer was welcomed and more details would be circulated [**Action: communications team**]
19. RG briefed board members on plans for the annual stakeholder workshop on ORR's business plan.
20. The Board agreed the approach to the business plan launch.

ITEM 7 UPDATE ON MONITORING NETWORK RAIL IN THE REMAINDER OF CP5

Sneha Patel and Liz Thornhill joined the meeting for this item

21. Jlk updated the board on progress made so far in discussions with NR and DfT about how ORR should assess NR's overall performance for the rest of CP5.
22. DfT were implementing the Bowe recommendations and seeking changes in the way that enhancements were managed and monitored by NR.
23. IP noted that neither template included a measure of asset safety.

MONITORING ENHANCEMENT DELIVERY

24. NR and DfT had designed a new process around enhancement projects to implement the Bowe recommendation. ORR needed to understand the state of these projects in order to monitor outputs against the settlement and to understand any impact on the other parts of NR's business – as well as any changes to the RAB. The processes for this were being discussed. The board noted the importance of the six-monthly Monitor in continuing to deliver transparency for stakeholders and parliament, including on enhancements. It was important in this context that the underlying data sets for DfT and for ORR should be the same.
25. The board noted that the Scottish government's approach to monitoring enhancements and drawing on ORR for efficient cost assessment had not changed.
26. The board noted that ORR's approach on road enhancements should be consistent with that adopted on rail at least to the extent of recognising and accounting for any differences.
27. Jlk noted that while the MOU between DfT and NR was not a matter for the regulator, ORR could welcome an arrangement which included stronger change management around projects.
28. There were areas of detail where the executive were working to set out the implications of proposed changes so that the final division of risk between NR and DfT was clearly recognised and areas where assurance would change as a result of ORR not carrying out roles (eg on ECAM) were understood.
29. The executive were keen to see these discussions brought to a satisfactory conclusion quickly.

PERFORMANCE

30. The board discussed NR's proposed approach to route scorecards which would allow NR to tailor route measures to TOC priorities, with criteria for success agreed between them. An approach agreed between NR and the TOCs might include different targets to those in PR13, (based on the route scorecards instead) as a means of indicating that NR is doing everything reasonably practicable to meet its PR13 targets. TOCs would need to be content with performance at this lower level and ORR would need to construct a new system for monitoring and enforcement under this different approach.
31. The executive were considering whether this would give sufficient information to enable ORR to report a rounded picture of performance across the network and between the various routes.
32. The board discussed these emerging proposals and agreed that it was NR's responsibility to deliver what its customers wanted, both immediately and in the longer term. If their customers were content then the regulator should have less cause to intervene.
33. ORR would also need to review its current input based monitoring.
34. The approach was cautiously welcomed.

Peter Antolik, Dan Brown, Graham Richards, Tom Taylor left the meeting

ITEM 8 CMA REPORT ON ON-RAIL COMPETITION

Lord Currie, Alex Chisholm, Andrea Coscelli, Rachel Merelie and James Lambert of CMA joined the meeting for this item.

Chris Hemsley, Deputy Director RME joined the meeting.

35. The meeting agreed that the collaborative approach to this issue had delivered important benefits with each party contributing. The impact on government thinking had already been significant but it was important to find ways to keep up the momentum if the potential benefits to consumers of increased competition were to be realised.
36. CMA outlined their draft recommendations. Some were improvements which could be introduced without major change and some ORR was already considering. Others would require more significant changes to the industry, possibly including legislative change.
37. Both groups agreed on the importance of engaging HMT and BIS in this work and discussed other forums where the evidence and analysis might stimulate discussion. DfT's engagement was increasingly positive at a senior level and it was possible that the Shaw report would have relevant recommendations.
38. The meeting agreed that a steering group should also act as a forum for information sharing and taking forward the CMA's recommendations.
39. The board noted that DfT had to respond to the CMA report and either comply with recommendations or explain why they will not.
40. Both parties agreed this was work that they wished to build on.

The CMA delegation and Chris Hemsley left the meeting

ITEM 9 DfT REVIEW OF RAIL REGULATION

Bernadette Kelly, DG Rail Group, and Dan Moore, DfT Rail Group joined the meeting

Graham Richards and Dan Brown re-joined the meeting

41. BK thanked the board for ORR's positive engagement on the DfT review which reflected wider engagement amongst stakeholders.
42. The meeting discussed the likely findings of the review, the emerging recommendations, and its timing.
43. In that discussion, the ORR board noted that there might be scope for rationalisation of ORR's 24 duties but were concerned that giving any duties precedence would effectively restrict the independence of the regulator. Balancing the various duties and interests was the essence of a regulator's job and conferred protection from political change and short term shifts for investors and taxpayers.
44. DfT noted the increase in ORR's consumer activity in recent years which they welcomed. Government's aim was to put the user at the heart of regulatory thinking.
45. Discussions would continue on ways to improve the regulatory toolkit, benchmarking, governance, and monitoring of enhancements, which will be considered further in the upcoming PR18 consultation.
46. The meeting discussed the different roles and requirements for each body in monitoring enhancements with DfT acting as client and ORR reporting regularly to Parliament on progress. Both bodies should work from common data sets.
47. It was important that any MOU between NR and DfT allowed ORR to fulfil its reporting role and included the current list of enhancement projects covered.
48. The meeting agreed that overall work was going well.
49. The meeting discussed the apparent perception in the industry that ORR's safety regime resulted in inflated costs. DfT and ORR had both sought specific examples, but as none had been given it seemed possible that the problem was one of perception and needed to be addressed as such. Over-specification, particularly on spurious safety grounds, was inefficient and needed to be resisted.
50. DfT would keep in touch in advance of publication of their review. SG thanked BK and DM for attending.

Bernadette Kelly and Dan Moore left the meeting.

51. The board reflected on the discussions with CMA and DfT as being encouraging for the future.

ITEM 10 NR BUSINESS PLAN

Liz Thornhill and Mark Morris joined the meeting

52. Jlk set out the approval process for the business plan which would be produced by NR and agreed by the Secretary of State.

53. The board had previously identified a number of risks around NR's business plan in terms of the risk of regulatory action and medium term degradation of network assets. Richard Price had written to Mark Carne before Christmas detailing these concerns. These risks had not been mitigated in later iterations of the plan and the future financial risks remained high.
54. ORR has a regulatory role on safety and asset policies and other licence conditions. The board discussed whether the current plan was likely to lead to licence breach.
55. The board noted the very tight budget that NR had set and considered whether this should trigger an immediate intervention from ORR. Both NR's management and Secretary of State for Transport had responsibilities here and intervention was not thought appropriate.
56. The board noted the likely long term impact of a slow deterioration in network condition in terms of increased future costs for recovery and increased future risks to safety and reliability. The test for enforcement action remained whether NR was doing everything reasonably practicable to meet its licence obligations, which include sustainability and application of its asset policies. NR would argue that its funds were constrained and therefore it was doing all it could within its funding envelope. An alternative view could be that NR has choices and could cut spending elsewhere, by way of increased efficiency or possibly by cutting spending on enhancements, although we need to understand whether DfT's position makes this possible.
57. The board agreed that JW should write to NR, copied to senior leadership at the DfT, setting out our views on the business plan. **[Action: JW]**

ITEM 11 STRUCTURAL CHANGE AT NR

58. Jlk updated the board on the challenges faced by NR in identifying assets for sale to meet government's targets. ORR's role in disposals was poorly understood by DfT and NR and needed to be set out very clearly. Jlk planned to increase resources to fulfil ORR's role in these disposals in a timely way if necessary. Some regulatory issues might emerge after asset sales such as changes to the RAB and adjustments to income streams.
59. Jlk reported on the strategic stations company. His team were considering whether and how to license a strategic stations company. The proposal to dispose of electrical distribution assets was less well developed and carried additional challenges.
60. The Welsh government (WG) had asked for ORR's help in developing their plans for the vertical integration of infrastructure and train operations into a franchise. We had offered WG our full involvement but this work could be resource heavy at specific times so it carried reputational and operational risk.

ITEM 12 ANY OTHER BUSINESS

HIGHWAYS COMMITTEE–

61. SG gave an update from the meeting the day before.

MEDIA CONTACT

62. The board agreed to grant a dispensation to SCS members to negate the requirement (recently introduced into the civil service code) that contact with the media had to be agreed by a Minister because the requirement could not be met in a non-Ministerial department which was an independent regulator. This dispensation was on the condition that all media contact was coordinated and approved in advance by ORR's communications team as set out in our guidance. All communications must also continue to abide by the Government's Communication Service Propriety Guidance.

Bob Holland left the meeting

ITEM 13 EAST COAST MAINLINE TRACK ACCESS APPLICATIONS

Rob Plaskitt and Emily Bulman joined the meeting

This item to be redacted until the final decision has been made public.

63. John Larkinson updated the board on the forthcoming third hearing on these applications which would look at economic analysis and capacity issues. The aim was to identify areas of agreement and remaining areas of disagreement between the parties.
64. ORR and NR had a similar view of capacity issues and therefore what mix of services might be accommodated.
65. DfT had not clarified their comment that implied some enhancement investment might not go ahead depending on the open access decisions ORR makes. The board noted that this currently amounted to an assertion rather than evidence which could be weighed in their decision.
66. The board discussed the slide pack and the access constraints at each end of the main line in question.
67. The board discussed the way modelling had been done and noted that ORR's approach differed from government treatments in some areas as a result of our wider duties compared to DfT's focus. The board noted that in some situations abstraction would be from other open access services, rather than franchises.
68. The board noted that no open access operators would necessarily be held harmless to changes in charging at periodic review and that these rights could cover at least two review periods.
69. The board discussed how the team could support a robust decision in terms of analysis and exposition of plausible options including conditions that might be imposed as part of an award of access rights.
70. The board noted that the earliest date for decisions on these applications would be April 2016.

[ends]