

**Office of Rail Regulation**  
**Minutes of the 96<sup>th</sup> Board meeting**  
**Session 2 on 23 July 2013**

**(09:00 – 15:30), ORR offices, One Kemble Street, London – Room 2**  
**Board present:**

**Non-executive directors:** Anna Walker (Chair), Tracey Barlow, Peter Bucks, Mark Fairbairn, Mike Lloyd, Stephen Nelson, Ray O'Toole, and Steve Walker.

**Executive directors:** Richard Price (Chief Executive), Alan Price (Director, Railway Planning and Performance), and Cathryn Ross (Director of Railway Markets and Economics)

**In attendance, all items except Item 6:** Daniel Brown (Director of Strategy), Sue Johnston (Deputy Director, RSD), Juliet Lazarus (Director Legal Services), and Gary Taylor (Assistant Board Secretary). Tess Sanford (Board Secretary) in attendance for all items

**In attendance, specific items:** John Larkinson (PR13 programme Director) (item 4 and 5), Carl Hetherington (Item 4), Mark Morris (item 4), Amanda Clark (item 4), Richard Parry Jones and Jon Haskins Head of Regulatory Compliance and Reporting at Network Rail (Item 6), Nigel Fisher, Samantha McClelland Hodgson, Jay Lindop (Item 7), Brian Kogan, Ian Williams, Paul Hadley (Item 8), Annette Egginton (Item 9). Mick Whelan (ASLEF), Manuel Cortes (TSSA), Elly Baker, TSSA, Bob Crowe RMT, Mick Cash, RMT, Peter Pinkney, RMT (item 5)

**Item 1: Welcome and apologies for absence**

1. The Chair welcomed everyone to the meeting. Apologies for absence were received from Ian Prosser.

**Item 2: Declarations of interest**

2. None.

**Item 3: Monthly Health and Safety Report**

3. Sue Johnston highlighted the following safety issues:

4. NR had not met their commitments on staff numbers in delivery units and this meant that workbanks were continuing to grow. We discussed the limitations on safety inspectors who were required to find specific material risks, and could not therefore use safety enforcement to require NR to reduce the size of the workbanks. We discussed whether there were economic regulatory tools that we could use as it was clear that the asset base was suffering from the lack of preventative maintenance.

5. Reporting against close call monitoring was now underway. Significant regional differences suggested that it was still not capturing all incidents in some areas – this was likely to be caused by issues around contractors' staff. Where it was being done properly, management were finding the information helpful.

6. In response to a question about a specific recent incident on a crossing, Sue reported that NR are planning to do a major review of risk on level crossings. This meant that their historic level crossing risk assessments (which were of varying age and quality) would not be reviewed individually.

#### **Item 4: Network Rail – Overall financial performance**

7. Carl Hetherington presented this item which set out recommendations for financial adjustments to be made to Network Rail's financial performance for 2012-13 to be included in the Annual Assessment of Network Rail's financial performance to be published on 12 September 2013.

*Paragraphs 8-13 have been redacted as they relate to policy development*

14. In summary there was broad agreement with the suggested approach. However we did feel that further clarity around the range of numbers was needed to ensure that we understood the proposed total adjustment figure and the reasons for it – and for differences between us and Network Rail. We agreed that a clear rationale should be produced which included lines to take with Network Rail on these issues. We agreed that this should be done through correspondence to Board members in August.

**Board 23.07.2013 Action i:** We agreed that it was important to get the messaging right on FVA. These messages need to be at 2 levels - at CE level (press etc.) and NR level.

**Board 23.07.2013 Action ii:** These messages and steps need to be written up and circulated to Board members through correspondence.

**Board 23.07.2013 Action iii:** We agreed that we need to have a clear understanding of the risks around publication and how these will be managed.

#### **Item 5: Trade Union representations – Feedback on ORR's Draft Determination**

15. We welcomed Peter Pinkney (President), Robert Crow (General Secretary) and Mick Cash (Assistant General Secretary) from the Rail Maritime and Transport (RMT), Manuel Cortes (General Secretary) and Elly Baker (Senior Regional Organiser) from the Transport Salaried Staff Association (TSSA) and Mick Whelan (General Secretary) from the Amalgamated Society of Locomotive Engineers and Firemen (ASLEF) to provide their feedback on ORR's draft determination.
16. In summary the following points were raised and discussed in detail:
17. Concerns were raised over the casualisation of the industry with the increase of zero hour contracts for workers. Sue Johnston said that ORR recognised the potential safety consequences and have started to discuss with Network Rail. The Chair stressed that the draft determination did not result in the need for casual working in the industry.
18. Road related incidents due to rail workers undertaking long hours were raised as a concern. We agreed that fatigue management was an issue which the ORR has worked with the industry to address. Sue highlighted the recent published reports by both the RSSB and ORR and work in this area will continue.
19. Network Rail's failure to manage the effects of severe weather conditions – most notably poor drainage and management of vegetation was highlighted. The Chief Executive agreed and said that the rate of progress made by NR to mitigate these risks was disappointing. We noted that the draft determination has provided for an additional £500m should Network Rail demonstrate that they have mitigated these

risks effectively. Regulatory targets for the management of assets have also been included. The Chair confirmed ongoing concerns over climate change and severe weather as it has a severe impact on infrastructure. ORR has highlighted this issue in the draft determination and Network Rail have been asked to develop a plan to address these concerns in advance of publishing the final determination document in October.

20. Concerns were raised that the pace of change needed within Network Rail was unmanageable and would put safety standards at risk. The Chief Executive highlighted that the draft determination has a major focus on safety with input at all levels from safety colleagues from across the industry. Additional funds have been assigned to closing level crossings alongside additional funds assigned to address worker safety issues and civil structures.
21. Concerns were raised over the low levels of preventive maintenance. We explained that we have allowed for more money to ensure that a programme of maintenance is established to address the risks during the control period.
22. We discussed the comparisons for staff costs which were referred to in the draft determination (although they were not used in any calculation). John Larkinson agreed that he could discuss this with the Trade Unions to provide greater clarity on this.
23. We thanked the Trade Union representatives for their views. The Chair confirmed that the closing date for consultation responses was 4 September 2013.

**Board 23.07.2013 Action xv:** John Larkinson to offer to discuss staff costs comparators with the Trade Union groups

### **Item 6: Richard Parry Jones (Chairman, Network Rail) presentation to the ORR Board**

24. [Richard Parry Jones (RPJ) and Jon Haskins joined the meeting.]
25. Anna Walker represented to him the very serious concerns of the ORR Board about Network Rail's performance. It was clear that performance was not improving and that there were serious operational issues in delivering appropriate levels of maintenance and renewal work. ORR's Board had invited him to attend the meeting so that we could be sure that we had done everything possible to tell the NR Board about the depth of our concerns.
26. We heard RPJ's account of the structures for scrutiny and challenge that the NR Board used to hold their executive to account. He assured us that he did understand and to a large extent shared our concerns. During a wide ranging discussion he mentioned some issues where the two boards did not agree:
  - The level of weather resilience appropriate for the network;
  - Asset reliability targets in CP4 (which had no rational basis);
  - The need to decouple performance and capacity.
27. RPJ asserted that his Board was doing everything that was reasonably practicable to achieve a significant shift in performance. There was a great deal of challenge to the executive to deliver improvement: it was not yet all being delivered but the Board

were doing as much as they could. Some future work was still being planned but there was already plenty of activity under way.

28. We gave a number of examples where NR had set their own targets or plans and had now failed to deliver them. We also gave some detailed examples where our executive were not confident that the NR Board were fully in the picture.
29. We all agreed that we should continue to have a Board-to-Board dialogue through what was likely to be a challenging time. NR were due to respond to the draft determination at a meeting with the ORR Board on 3 September. Our executives were already discussing emerging areas of concern and the Boards should meet after 3 September when we might revisit CP4 performance.

### **Item 7: Performance - Long distance and LSE**

30. We noted the paper on Network Rail performance in the Long Distance and LSE sectors and the recommendations from the executive team.
31. Following discussion and consideration of the evidence we agreed to the executive's recommendation to find Network Rail in breach of their licence in respect of the failure to meet Public Performance Measures in 2012-13. Following discussion we agreed that we would not impose a financial penalty. We recognised that we need to ensure that the NR board are engaged and committed to holding the NR executive team to account on the delivery of improvements to performance and this is clear in our public handling on the issue.
32. We discussed the content of the decision letter. We agreed that it would be important to continue to discuss with the NR Board how they will improve performance. As part of this we agreed that it would be important to understand what additional funds and resources they will put in place to ensure that performance is improved by the end of 2013-14 and entering into CP5.
33. We delegated handling of this decision to the Chair and Chief Executive to manage. The Chair agreed to discuss with Richard Parry Jones once the decision letter was finalised. The Chief Executive agreed to discuss with David Higgins in parallel. We agreed that it was important for Richard Emmott to develop a short public statement on our decision.

**Board 23.07.2013 Action iv:** Decision letter to be prepared by Alan Price.

**Board 23.07.2013 Action v:** Handling of the points should be signed off by the Chair and Chief Executive. As part of this the Chair agreed to discuss with Richard Parry Jones in advance of a public announcement.

**Board 23.07.2013 Action vi:** Richard Emmott agreed to develop the appropriate press lines to take.

### **Item 8: Access application**

34. Brian Kogan presented this item and asked the Board to consider the merits of an application submitted by West Coast Trains Ltd under section 22A of the Railways Act 1993 for track access rights to run two return services Monday to Saturday and one return service on Sunday between London Euston and each of Blackpool and Shrewsbury from December 2013 until the expiry of its track access contract in

December 2022. Network Rail had not been prepared to agree the necessary access rights.

35. The decision had been escalated for a decision at Board level because it was likely to be controversial.
36. In considering the evidence and arguments of the parties the Board had regard to the statutory duties imposed on ORR primarily under section 4 of the Railways Act 1993 (as amended). The Board saw as particularly relevant to this application our duties to protect the interests of users of railway services, promote the use of the network for passengers and goods, promote competition for the benefit of rail users and promote improvements in railway service performance. Following discussion on the evidence and arguments, the Board agreed to reject the application based on the analysis both of existing poor performance and the lack of appropriate capacity on the West Coast Mainline. Whilst direct services to Blackpool and Shrewsbury would obviously be of benefit to the passengers making those journeys without having to change trains en route (as evidenced by the public support shown for these proposals), the Board believed the negative impact on greater numbers of existing users would outweigh that advantage because of the effect that these additional services would have on their punctuality and reliability.
37. The Board agreed however that it was important for the public announcement on this decision to make it clear that we understood why these services were wanted and would look at the issues again in the future. A letter communicating our decision and reasons for it would be sent by Brian Kogan to the applicant copied to Network Rail and DfT.
38. The Board noted that Network Rail anticipated that the timing of enhancements meant that no significant new services could be accommodated before a major timetable recast in December 2016. However Network Rail have recently indicated that they are investigating the scope for bringing forward work, together with associated timetable improvements perhaps as early as December 2014. ORR has also increased pressure on NR's board to deliver improved performance before the end of CP4. The Board agreed that should more capacity become available (e.g. through the completion of enhancement improvements) and Network Rail showed the ability to deliver improved performance, we would be prepared to consider applications for the use of any newly available capacity
39. The Board discussed the handling for public communications about our decision and agreed that the Chief Executive and Richard Emmott would prepare a public statement. The Board also agreed that it would be beneficial for the Chair to explain our decision to the Secretary of State who had publicly supported the application. Brian agreed to prepare a speaking note for this conversation.

**Board 23.07.2013 Action vii:** The Chief Executive and Richard Emmott agreed to prepare a public statement on our decision.

**Board 23.07.2013 Action viii:** The Chair would speak to the SoS and other DfT ministers to explain ORR's decision. Brian Kogan would prepare a speaking note to assist this discussion.

**Board 23.07.2013 Action ix:** The Chair would raise these issues with Richard Parry Jones to emphasise concerns about how NR plans to address capacity issues.”

### **Item 9: Real Time Train Information**

40. We noted the paper which set out that we establish a multi-stakeholder task force involving the industry with an independent Chair to develop a solution to the problems of third party access in this market. The proposal was that we would ask the task force to write a report containing recommendations within four months.  
*Paragraph 41 has been redacted as it relates to policy development*
42. We discussed establishing a stakeholder task force would have the objective of presenting a report to us on a proposed solution to the problems with this market. We agreed that it was crucial to have an independent chair of the group. We agreed that Anna Walker would discuss potential candidates with Cathryn and Annette – any suggestions should be passed to Cathryn.

### **Item 10: Chair’s report**

43. The Chair highlighted the following points from her report:
44. Colin Foxall (Chairman of Passenger Focus) had challenged us to use our influence more proactively to drive improvements in TOC behaviour, citing lack of information during disruption on the East Coast.
45. DfT had proposed that the new Highways regulator should be a public corporation and this left ORR as the only DfT regulator which would be a non-ministerial government department. We needed to consider whether this mattered to us. There was a great deal of discussion about economic regulators at the moment and we needed to be taking an active part in that.
46. The Board objectives for 2013/14 were included. Any final comments should be sent to the Board Secretary. A report on the first six months’ progress would be included with the October Chair’s report.
47. We noted the suggested Board dates for 2014. We agreed to review the dates and provide comments to the Board Secretary. We agreed to group the Board and committee meetings together in two days each month. Dates would be provided to Board members shortly.

**Board 23.07.2013 Action x:** Board members agreed to Board objectives. Any further comments to be provided by end of the week.

**Board 23.07.2013 Action xi:** Board members to provide availability on proposed 2014 Board dates.

**Board 23.07.2013 Action xii:** Board Secretariat to contact Board members with proposed Board Committee dates for 2014

### **Item 11: Chief Executives report**

48. The Chief Executive highlighted the following points:
49. We continue to engage at all levels as the arrangements are put in place to establish the Competition and Markets Authority (CMA) and the new concurrency framework. We have seen and commented on drafts of the various supporting statutory instruments and guidance documents. There has been a first joint CEO’s meeting of

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the CMA and regulatory heads at which the CMA's strategic principles for concurrency were discussed. The Head of Competition and Consumer policy is part of the joint drafting group for the new 'UK Competition Network Strategy'.

50. We received an update on the recent rail incident in Bretigny, France. Sue confirmed that we had been in dialogue with French officials to understand the cause of the incident and to understand whether there are any lessons to learn.
51. We noted the work to look at the Board's vision and how this can be more visible to staff. We agreed with the suggested actions to address this concern. Some work with staff will take place to understand the poor staff survey results. We agreed with the proposal for NEDs to attend staff briefing sessions in September to discuss the Board's vision.
52. The upward trend of the Precursor Indicator Model (PIM) was noted. We agreed that the September CE's report would provide Board members with an update.
53. Daniel Brown provided a brief update on the feedback received following the publication of the Long Term Regulatory Statement (LTRS). We agreed that it was particularly important the DfT took up the challenges set out for them. The follow up actions planned for the LTRS would be shared for comment with the Board.

**Board 23.07.2013 Action xiii:** The Board agreed that it should understand the follow up actions to the LTRS as this was potentially sensitive for ORR's reputation. Dan agreed to circulate the plan to Board members for agreement.

**Board 23.07.2013 Action xiv:** The next CE's report should highlight PIM trends and their significance.

## **Item 12: Board forward programme**

54. The Board forward programme was noted. No comments were received.

## **Item 13: Approval of minutes of Board meeting held on 25 June 2013**

55. The draft minutes of the meetings held on 25 June 2013 were noted and agreed.

## **Item 14: Matters arising not taken elsewhere on the agenda**

56. The updates on the outstanding Board actions were noted.

## **Item 15: Any other business**

57. No items were raised.

## **Item 16: Meeting review**

58. We agreed that the meeting had been productive given the significant number of important issues on which decisions had had to be made.
59. We agreed that more time should have been allocated to the discussion on Network Rail's annual efficiency assessment and the Board attached importance to seeing the follow up document prior to publication to ensure all issues had been covered.

## **Items for information**

### **Item 17: Internal Health and Safety report**

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60. We noted the report. No comments were made.

**Item 18: Europe – update**

61. The paper was noted. The Chair confirmed that the paper will be discussed in detail at the September Board meeting.

**Anna Walker**

**Chair**

Minutes approved by the Board on 17 September 2013